MISSISSIPPI CODE 1972
Annotated

Taxation and Finance

(§ 27-55-1 to
§ 27-113-9)

Title 27

TABLE OF CONTENTS

VOLUME 8C

TITLE 27

TAXATION AND FINANCE (CONT'D)

CHAP. No.		BEGINNING SECTION
55.	Gasoline and Motor Fuel Taxes	27-55-1
57.	Tax on Oils	27-57-1
59.	Liquefied Compressed Gas Tax	27-59-1
61.	Interstate Commercial Carriers Motor Fuel Tax	27-61-1
63.	Motor Vehicle Fueling Centers [Repealed]	
65.	Sales Tax	27-65-1
67.	Use or Compensating Taxes	27-67-1
68.	Uniform Sales and Use Tax Administration Law	27-68-1
69.	Tobacco Tax	27-69-1
70.	Nonsettling-Manufacturer Cigarette Fee	27-70-1
71.	Alcoholic Beverage Taxes	27-71-1
73.	Tax Refunds	27-73-1
75.	Reciprocal Collection of Taxes	27-75-1
77.	Appellate Review for Taxpayers Aggrieved by Certain Actions of the State Tax Commission	27-77-1
101.	Annual Reports by Departments of Government and State-Supported Institutions	27-101-1
103.	State Budget	27-103-1
104.	State Fiscal Affairs	27-104-1
105.	Depositories	27-105-1
107.	Disaster Relief	27-107-1
109.	Cruise Vessels	27-109-1
111.	Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities	27-111-1
113.	Facilitating Business Rapid Response to State Declared Disasters Act of 2015	27-113-1

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME EIGHT C

TAXATION AND FINANCE

§§ 27-55-1 to 27-113-9

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2017 REGULAR LEGISLATIVE SESSION
AND 1ST EXTRAORDINARY SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

Volume 8C of the Mississippi Code of 1972 Annotated is a new volume, added in 2017. It contains material formerly appearing in the original 1973 bound Volume 8, the 2002 and 2006 Replacement Volume 8, the 2008 Replacement Volume 8A, the 2005 Replacement Volume 9, and the 2010 Replacement Volume 8B and its Cumulative Supplement, as well as amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2017 Regular and 1st Extraordinary Legislative Sessions.

This volume contains Chapters 55 through 113 of Title 27. The remaining Title 27 chapters appear in the following volumes: Chapters 1 through 17, Replacement Volume 8; Chapter 19, Replacement Volume 8A; and Chapters 21 through 53, Replacement Volume 8B.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

September 2017 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— Index
— Joint Legislative Committee Notes
— Judicial Decisions
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Source Notes
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

GENERAL OUTLINE OF TITLES AND CHAPTERS

Constitution of the United States .... Volume 1
Constitution of Mississippi .... Volume 1

AMENDMENTS

TITLE 1. LAWS AND STATUTES

			Beginning Section
Chapter	1.	Code of 1972	1-1-1
	3.	Construction of Statutes	1-3-1
	5.	Session Laws and Journals	1-5-1

TITLE 3. STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

Chapter	1.	State Sovereignty Commission [Repealed]	3-1-1
	3.	State Boundaries, Holidays, and State Emblems	3-3-1
	5.	Acquisition of Land by United States Government	3-5-1
	7.	Compact for a Balanced Budget	3-7-1

TITLE 5. LEGISLATIVE DEPARTMENT

Chapter	1.	Legislature	5-1-1
	3.	Legislative Committees	5-3-1
	5.	Interstate Cooperation	5-5-1
	7.	Lobbying [Repealed]	5-7-1
	8.	Lobbying Law Reform Act of 1994	5-8-1
	9.	Agency Review	5-9-1
	11.	Abolishment of Agencies	5-11-1

TITLE 7. EXECUTIVE DEPARTMENT

Chapter	1.	Governor	7-1-1
	3.	Secretary of State	7-3-1
	5.	Attorney General	7-5-1
	7.	State Fiscal Officer; Department of Audit	7-7-1
	9.	State Treasurer	7-9-1
	11.	Secretary of State; Land Records	7-11-1
	13.	Mississippi Administrative Reorganization Act	7-13-1
	15.	Executive Branch Reorganization Study Commission [Repealed]	7-15-1

TITLE 7. EXECUTIVE DEPARTMENT (Cont'd)

Beginning Section

17. Mississippi Executive Reorganization Act of 1989 7-17-1

TITLE 9. COURTS

CHAPTER
1. Provisions Common to Courts 9-1-1
3. Supreme Court 9-3-1
4. Court of Appeals of the State of Mississippi 9-4-1
5. Chancery Courts 9-5-1
7. Circuit Courts 9-7-1
9. County Courts 9-9-1
11. Justice Courts 9-11-1
13. Court Reporters and Court Reporting 9-13-1
15. Judicial Council [Repealed] 9-15-1
17. Court Administrators 9-17-1
19. Commission on Judicial Performance 9-19-1
21. Administrative Office of Courts 9-21-1
23. Drug Courts 9-23-1
25. Veterans Treatment Courts 9-25-1
27. Rivers McGraw Mental Health Diversion Pilot Program Act 9-27-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE

CHAPTER
1. Practice and Procedure Provisions Common to Courts 11-1-1
3. Practice and Procedure in Supreme Court 11-3-1
5. Practice and Procedure in Chancery Courts 11-5-1
7. Practice and Procedure in Circuit Courts 11-7-1
9. Practice and Procedure in County Courts and Justice Courts 11-9-1
11. Venue of Actions 11-11-1
13. Injunctions 11-13-1
15. Arbitration and Award 11-15-1
17. Suits to Confirm Title or Interest and to Remove Clouds on Title 11-17-1
19. Ejectment 11-19-1
21. Partition of Property 11-21-1
23. Trial of Right of Property 11-23-1
25. Unlawful Entry and Detainer 11-25-1
27. Eminent Domain 11-27-1
29. Sequestration 11-29-1
31. Attachment in Chancery Against Nonresident, Absent or Absconding Debtors 11-31-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE (Cont'd)

Beginning Section
33. Attachment at Law Against Debtors 11-33-1
35. Garnishment 11-35-1
37. Replevin 11-37-1
38. Claim and Delivery 11-38-1
39. Quo Warranto 11-39-1
41. Mandamus; Prohibition 11-41-1
43. Habeas Corpus 11-43-1
44. Compensation to Victims of Wrongful Conviction and Imprisonment 11-44-1
45. Suits by and Against the State or Its Political Subdivisions 11-45-1
46. Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees 11-46-1
47. Lis Pendens 11-47-1
49. Rights and Duties of Attorneys, Generally 11-49-1
51. Appeals 11-51-1
53. Costs 11-53-1
55. Litigation Accountability Act of 1988 11-55-1
57. Structured Settlements 11-57-1
59. Uniform Interstate Depositions and Discovery Act 11-59-1
61. Mississippi Religious Freedom Restoration Act 11-61-1
62. Protecting Freedom of Conscience from Government Discrimination Act 11-62-1
63. Application of Foreign Law 11-63-1
65. Enforcement of Federal Laws, Orders, Rules ... 11-65-1
67. Asbestos Bankruptcy Trust Claims Transparency Act 11-67-1

TITLE 13. EVIDENCE, PROCESS AND JURIES

CHAPTER 1. Evidence 13-1-1
3. Process, Notice, and Publication 13-3-1
5. Juries 13-5-1
7. State Grand Jury Act 13-7-1

TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1. Limitation of Actions 15-1-1
3. Prevention of Frauds 15-3-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

Beginning Section

Chapter 1. Zoning, Planning and Subdivision Regulation .. 17-1-1
2. Building Codes 17-2-1
3. Promotion of Trade, Conventions and Tourism 17-3-1
5. Jails, Waterworks and Other Improvements 17-5-1
7. Removal of Local Governments in Emergencies 17-7-1
9. Lease of Mineral Lands other than Sixteenth Section or "In Lieu" Lands 17-9-1
11. Gulf Regional District Law 17-11-1
13. Interlocal Cooperation of Governmental Units 17-13-1
15. Human Resource Agencies 17-15-1
17. Solid Wastes Disposal 17-17-1
18. Mississippi Hazardous Waste Facility Siting Act of 1990 17-18-1
19. Appropriations to Planning and Development Districts 17-19-1
21. Finance and Taxation 17-21-1
23. Rural Fire Truck Acquisition Assistance Programs 17-23-1
25. General Provisions Relating to Counties and Municipalities 17-25-1
27. Municipal Historical Hamlet Act 17-27-1
29. Mississippi Entertainment District Act 17-29-1

TITLE 19. COUNTIES AND COUNTY OFFICERS

Chapter 1. County Boundaries 19-1-1
2. County Government Reorganization Act 19-2-1
3. Board of Supervisors 19-3-1
4. County Administrator 19-4-1
5. Health, Safety and Public Welfare 19-5-1
7. Property and Facilities 19-7-1
9. Finance and Taxation 19-9-1
11. County Budget 19-11-1
13. Contracts, Claims and Transaction of Business with Counties 19-13-1
15. Records and Recording 19-15-1
17. County Auditors 19-17-1
19. Constables 19-19-1
21. Coroners 19-21-1
23. County Attorneys 19-23-1
25. Sheriffs 19-25-1
27. Surveyors and Surveys 19-27-1

TITLE 19. COUNTIES AND COUNTY OFFICERS (Cont'd)

			Beginning Section
	29.	Local and Regional Railroad Authorities	19-29-1
	31.	Public Improvement Districts	19-31-1

TITLE 21. MUNICIPALITIES

CHAPTER	1.	Classification, Creation, Abolition, and Expansion	21-1-1
	3.	Code Charters	21-3-1
	5.	Commission Form of Government	21-5-1
	7.	Council Form of Government	21-7-1
	8.	Mayor-Council Form of Government	21-8-1
	9.	Council-Manager Plan of Government	21-9-1
	11.	Municipal Elections [Repealed]	21-11-1
	13.	Ordinances	21-13-1
	15.	Officers and Records	21-15-1
	17.	General Powers	21-17-1
	19.	Health, Safety, and Welfare	21-19-1
	21.	Police and Police Departments	21-21-1
	23.	Municipal Courts	21-23-1
	25.	Fire Departments and Fire Districts	21-25-1
	27.	Public Utilities and Transportation	21-27-1
	29.	Employees' Retirement and Disability Systems	21-29-1
	31.	Civil Service	21-31-1
	33.	Taxation and Finance	21-33-1
	35.	Municipal Budget	21-35-1
	37.	Streets, Parks and Other Public Property	21-37-1
	38.	Acquisition or Lease of Real Property from Federal Government for Parks, Recreation, and Tourism	21-38-1
	39.	Contracts and Claims	21-39-1
	41.	Special Improvements	21-41-1
	43.	Business Improvement Districts	21-43-1
	45.	Tax Increment Financing	21-45-1
	47.	Delta Natural Gas District	21-47-1

TITLE 23. ELECTIONS

CHAPTER	1.	Qualification of Candidates and Registration of Political Parties [Repealed]	23-1-1
	3.	Corrupt Practices [Repealed]	23-3-1
	5.	Registration and Elections [Repealed]	23-5-1
	7.	Voting Machines and Electronic Voting System [Repealed]	23-7-1

TITLE 23. ELECTIONS (Cont'd)

Beginning Section
9. Absentee Ballot [Repealed] 23-9-1
11. Presidential Election Law [Repealed] 23-11-1
13. Mississippi Presidential Preference Primary and Delegate Selection Law [Repealed] 23-13-1
15. Mississippi Election Code 23-15-1
17. Amendments to Constitution by Voter Initiative 23-17-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER 1. Public Officers; General Provisions 25-1-1
3. Salaries and Compensation 25-3-1
4. Ethics in Government 25-4-1
5. Removals From Office 25-5-1
7. Fees 25-7-1
9. Statewide Personnel System 25-9-1
11. Social Security and Public Employees' Retirement and Disability Benefits 25-11-1
13. Highway Safety Patrol Retirement System 25-13-1
14. Government Employees Deferred Compensation Plan Law 25-14-1
15. Group Insurance for Public Employees 25-15-1
17. Cafeteria Fringe Benefit Plans 25-17-1
19. Public Employer-Assisted Housing Program 25-19-1
31. District Attorneys 25-31-1
32. Public Defenders 25-32-1
33. Notaries Public 25-33-1
41. Open Meetings 25-41-1
43. Administrative Procedures 25-43-1.101
45. Permit and Licensing Procedures 25-45-1
51. State Depository for Public Documents 25-51-1
53. Mississippi Department of Information Technology Services (MDITS) 25-53-1
55. Lost Records 25-55-1
57. Destruction of Records [Repealed] 25-57-1
58. Geographic Information System 25-58-1
59. Archives and Records Management 25-59-1
60. Local Government Records 25-60-1
61. Public Access to Public Records 25-61-1
63. Digital Signature Act 25-63-1
65. Agency, University and Community/Junior College Internal Auditing Program 25-65-1

TITLE 27. TAXATION AND FINANCE

			Beginning Section
CHAPTER	1.	Assessors and County Tax Collectors	27-1-1
	3.	Department of Revenue	27-3-1
	4.	Board of Tax Appeals	27-4-1
	5.	Motor Vehicle Comptroller	27-5-1
	7.	Income Tax and Withholding	27-7-1
	8.	Mississippi S Corporation Income Tax Act	27-8-1
	9.	Estate Tax	27-9-1
	10.	Uniform Estate Tax Apportionment Act	27-10-1
	11.	Amusement Tax [Repealed]	27-11-1
	13.	Corporation Franchise Tax	27-13-1
	15.	Statewide Privilege Taxes	27-15-1
	17.	Local Privilege Taxes	27-17-1
	19.	Motor Vehicle Privilege and Excise Taxes	27-19-1
	21.	Finance Company Privilege Tax	27-21-1
	23.	Chain Store Privilege Tax [Repealed]	27-23-1
	25.	Severance Taxes	27-25-1
	27.	Vending and Amusement Machine Taxes	27-27-1
	29.	Ad Valorem Taxes—General Provisions	27-29-1
	31.	Ad Valorem Taxes—General Exemptions	27-31-1
	33.	Ad Valorem Taxes—Homestead Exemptions	27-33-1
	35.	Ad Valorem Taxes—Assessment	27-35-1
	37.	Ad Valorem Taxes—Payments in Lieu of Taxes	27-37-1
	38.	Ad Valorem Taxes—Telecommunications Tax Reform	27-38-1
	39.	Ad Valorem Taxes—State and Local Levies	27-39-1
	41.	Ad Valorem Taxes—Collection	27-41-1
	43.	Ad Valorem Taxes—Notice of Tax Sale to Owners and Lienors	27-43-1
	45.	Ad Valorem Taxes—Redemption of Land Sold for Taxes	27-45-1
	47.	Ad Valorem Taxes—Assignment of Tax Liens ..	27-47-1
	49.	Ad Valorem Taxes—Insolvencies	27-49-1
	51.	Ad Valorem Taxes—Motor Vehicles	27-51-1
	53.	Ad Valorem Taxes—Mobile Homes	27-53-1
	55.	Gasoline and Motor Fuel Taxes	27-55-1
	57.	Tax on Oils	27-57-1
	59.	Liquefied Compressed Gas Tax	27-59-1
	61.	Interstate Commercial Carriers Motor Fuel Tax	27-61-1
	63.	Motor Vehicle Fueling Centers [Repealed]	27-63-1
	65.	Sales Tax	27-65-1
	67.	Use or Compensating Taxes	27-67-1
	68.	Uniform Sales and Use Tax Administration Law	27-68-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

Beginning Section
69. Tobacco Tax 27-69-1
70. Nonsettling-Manufacturer Cigarette Fee 27-70-1
71. Alcoholic Beverage Taxes 27-71-1
73. Tax Refunds 27-73-1
75. Reciprocal Collection of Taxes 27-75-1
77. Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue 27-77-1
101. Annual Reports by Departments of Government, State-Supported Institutions and Taxing Entities 27-101-1
103. State Budget 27-103-1
104. State Fiscal Affairs 27-104-1
105. Depositories 27-105-1
106. Iran Divestment Act of 2015 27-106-1
107. Disaster Relief 27-107-1
109. Cruise Vessels 27-109-1
111. Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018] 27-111-1
113. Facilitating Business Rapid Response to State Declared Disasters Act of 2015 27-113-1

TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY

CHAPTER 1. Public Lands 29-1-1
3. Sixteenth Section and Lieu Lands 29-3-1
5. Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion 29-5-1
7. Mineral Leases of State Lands 29-7-1
9. Inventories of State Property 29-9-1
11. Energy Conservation in Public Buildings [Repealed] 29-11-1
13. Flood Insurance for State-Owned Buildings 29-13-1
15. Public Trust Tidelands 29-15-1
17. State Agency Repair and Renovation 29-17-4

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS

CHAPTER 1. General Provisions Relative to Public Contracts 31-1-1
3. State Board of Public Contractors 31-3-1
5. Public Works Contracts 31-5-1
7. Public Purchases 31-7-1
8. Acquisition of Public Buildings, Facilities, and Equipment Through Rental Contracts 31-8-1

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS (Cont'd)

Beginning Section

9. Surplus Property Procurement Commission 31-9-1
11. State Construction Projects 31-11-1
13. Validation of Public Bonds 31-13-1
15. Refunding Bonds 31-15-1
17. State Bonds; Retirement of Bonds 31-17-1
18. Variable Rate Debt Instruments 31-18-1
19. Public Debts 31-19-1
21. Registered Bonds 31-21-1
23. Mississippi Private Activity Bonds Allocation Act 31-23-1
25. Mississippi Development Bank Act 31-25-1
27. Mississippi Bond Refinancing Act 31-27-1
29. Institute for Technology Development 31-29-1
31. Mississippi Telecommunications Conference and Training Center 31-31-1

TITLE 33. MILITARY AFFAIRS

CHAPTER 1. Definitions and General Provisions Relating to the Military Forces 33-1-1
3. Commander in Chief, Military Department, and Governor's Staff 33-3-1
4. Mississippi Military Family Relief Fund 33-4-1
5. The Militia and Mississippi State Guard 33-5-1
7. National Guard 33-7-1
9. Property and Finances 33-9-1
11. Training Facilities 33-11-1
13. Mississippi Code of Military Justice 33-13-1
15. Emergency Management and Civil Defense 33-15-1

TITLE 35. WAR VETERANS AND PENSIONS

CHAPTER 1. State Veterans Affairs Board 35-1-1
3. War Veterans; Miscellaneous Provisions 35-3-1
5. Guardianship of Veterans 35-5-1
7. Veterans' Home Purchase Law 35-7-1
9. Pensions [Repealed] 35-9-1

TITLE 37. EDUCATION

CHAPTER 1. State Board of Education 37-1-1
3. State Department of Education 37-3-1
4. Mississippi Community College Board 37-4-1
5. County Boards of Education and Superintendents 37-5-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
6.	Mississippi Uniform School Law	37-6-1
7.	School Districts; Boards of Trustees of School Districts	37-7-1
9.	District Superintendents, Principals, Teachers, and Other Employees	37-9-1
11.	General Provisions Pertaining to Education	37-11-1
12.	Mississippi Student Religious Liberties Act of 2013	37-12-1
13.	Curriculum; School Year and Attendance	37-13-1
14.	Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Act of 2007	37-14-1
15.	Public Schools; Records, Enrollment and Transfer of Pupils	37-15-1
16.	Statewide Testing Program	37-16-1
17.	Accreditation of Schools	37-17-1
18.	Superior-Performing, Exemplary and School At-Risk Schools Programs	37-18-1
19.	Teacher Compensation	37-19-1
20.	Remedial Education	37-20-1
21.	Early Childhood Education	37-21-1
22.	State Funds for School Districts	37-22-1
23.	Exceptional Children	37-23-1
24.	Mississippi Youth Concussion Law	37-24-1
25.	Driver Education and Training	37-25-1
26.	State Court Education Fund	37-26-1
27.	Agricultural High Schools	37-27-1
28.	Mississippi Charter Schools Act of 2013	37-28-1
29.	Junior Colleges	37-29-1
31.	Vocational Education	37-31-1
33.	Civilian Vocational Rehabilitation	37-33-1
35.	Adult Education	37-35-1
37.	Public Schools; Accounting and Auditing	37-37-1
39.	Public Schools; Purchases	37-39-1
41.	Transportation of Pupils	37-41-1
43.	Textbooks	37-43-1
45.	State Aid to Public Schools	37-45-1
47.	State Aid for Construction of School Facilities	37-47-1
49.	Loans to Students	37-49-1
51.	Financial Assistance to Children Attending Nonsectarian Private Schools	37-51-1
53.	Summer Normals [Repealed]	37-53-1
55.	School Libraries	37-55-1
57.	Taxation	37-57-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
59.	School Bonds and Obligations	37-59-1
61.	Expenditure of School Funds; Budgets	37-61-1
63.	Educational Television	37-63-1
65.	Closing of Public Schools and Institutions of Higher Learning	37-65-1
67.	Distance Learning Collaborative Act of 2016	37-67-1
101.	Institutions of Higher Learning; General Provisions	37-101-1
102.	Off-campus Instructional Programs	37-102-1
103.	Residency and Fees of Students Attending or Applying for Admission to Educational Institutions	37-103-1
104.	Mississippi Educational Facilities Authority Act for Private, Nonprofit Institutions of Higher Learning	37-104-1
105.	Campuses and Streets of State Institutions of Higher Learning	37-105-1
106.	Post-Secondary Education Financial Assistance	37-106-1
107.	Scholarships for Children of Deceased or Disabled Law Enforcement Officers or Firemen [Repealed]	37-107-1
108.	Scholarships for Children of Prisoners of War or Men Missing in Action	37-108-1
109.	Medical Education Loans and Scholarships. [Repealed]	37-109-1
110.	Mississippi Public Management Graduate Intern Program	37-110-1
111.	Fraternities, Sororities and Other Societies	37-111-1
113.	Mississippi State University of Agriculture and Applied Science	37-113-1
115.	University of Mississippi	37-115-1
117.	Mississippi University for Women	37-117-1
119.	University of Southern Mississippi	37-119-1
121.	Alcorn State University	37-121-1
123.	Delta State University	37-123-1
125.	Jackson State University	37-125-1
127.	Mississippi Valley State University	37-127-1
129.	Nursing Schools and Scholarships	37-129-1
131.	Teachers Demonstration and Practice Schools	37-131-1
132.	Student Teachers	37-132-1
133.	Technical Institutes	37-133-1
135.	Compacts with Other States	37-135-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
137.	School Asbestos Hazard Elimination Act [Repealed]	37-137-1
138.	Asbestos Abatement Accreditation and Certification Act	37-138-1
139.	Mississippi School for Mathematics and Science	37-139-1
140.	Mississippi School of the Arts	37-140-1
141.	The University Research Center Act of 1988	37-141-1
143.	Omnibus Loan or Scholarship Act of 1991	37-143-1
144.	Mississippi Rural Physicians Scholarship Program	37-144-1
145.	Mississippi Opportunity Loan Program Act	37-145-1
146.	Mississippi Rural Dentists Scholarship Program	37-146-1
147.	Mississippi University Research Authority Act	37-147-1
148.	Strengthening Mississippi Academic Research Through Business Act	37-148-1
149.	Mississippi Teacher Center	37-149-1
151.	Mississippi Accountability and Adequate Education Program Act of 1997	37-151-1
152.	Commission on Restructuring the Mississippi Adequate Education Program (MAEP)	37-152-1
153.	Workforce Training and Education Consolidation Act	37-153-1
154.	State Longitudinal Data System	37-154-1
155.	College Savings Plans of Mississippi	37-155-1
157.	Student Tuition Assistance	37-157-1
159.	Mississippi Teacher Scholarship Programs	37-159-1
160.	Teach for America Act	37-160-1
161.	Mississippi Education Reform Act of 2006	37-161-1
163.	Education Achievement Council	37-163-1
165.	Conversion Charter School Act of 2010	37-165-1
167.	New Start School Program [Repealed]	37-167-1
169.	Mississippi Autism Advisory Committee	37-169-1
171.	Use of School Property by Public for Recreation and Sports	37-171-1
173.	Dyslexia Therapy Scholarship for Students with Dyslexia Program	37-173-1
175.	Mississippi Speech-Language Therapy Scholarship for Students with Speech-Language Impairments Program	37-175-1
177.	Literacy-Based Promotion Act	37-177-1
179.	Districts of Innovation	37-179-1

TITLE 37. EDUCATION (Cont'd)

Beginning Section

181. Equal Opportunity for Students with Special Needs Act 37-181-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY

Chapter 1. State Law Library; Legislative Reference Bureau 39-1-1
3. Libraries and Library Commission 39-3-1
5. Archives and History 39-5-1
7. Antiquities 39-7-1
9. Trusts to Promote Arts and Sciences 39-9-1
11. Mississippi Arts Commission 39-11-1
13. Historic Preservation Districts and Landmarks 39-13-1
15. Municipal and County Funds to Support the Arts 39-15-1
17. Mississippi Sports Hall of Fame and Dizzy Dean Museum 39-17-1
19. Museum Unclaimed Property Act 39-19-1
21. Mississippi Craft Center 39-21-1
23. Mississippi Children's Museum 39-23-1
25. Mississippi Arts and Entertainment Center 39-25-1
27. Mississippi Blues Commission 39-27-1
29. Mississippi Commission on the Holocaust 39-29-1
31. Mississippi Bicentennial Celebration Commission [Repealed effective July 1, 2019] 39-31-1
32. Mississippi Country and Western Music Commission 39-32-1
33. Mississippi Country Music Trail 39-33-1
35. Mississippi Sesquicentennial of the American Civil War Commission 39-35-1
37. Mississippi Heritage, History and Culture Trail Program 39-37-1
39. Mississippi Civil Rights Museum Advisory Commission 39-39-1

TITLE 41. PUBLIC HEALTH

Chapter 1. Mississippi Department of Public Health [Repealed] 41-1-1
3. State Board of Health; Local Health Boards and Officers 41-3-1
4. Department of Mental Health 41-4-1
5. Governing Authorities for State Hospitals and Institutions 41-5-1
7. Hospital and Health Care Commissions 41-7-1

TITLE 41. PUBLIC HEALTH (Cont'd)

		Beginning Section
9.	Regulation of Hospitals; Hospital Records	41-9-1
10.	Medical Records	41-10-1
11.	State Charity Hospitals; Mississippi Children's Rehabilitation Center	41-11-1
13.	Community Hospitals	41-13-1
15.	Department for the Prevention of Insanity [Repealed]	41-15-1
17.	State Mental Institutions	41-17-1
19.	Facilities and Services for Individuals with an Intellectual Disability or Mental Illness	41-19-1
21.	Individuals with Mental Illness or an Intellectual Disability	41-21-1
22.	Hemophilia	41-22-1
23.	Contagious and Infectious Diseases; Quarantine	41-23-1
24.	Sickle Cell Testing Program	41-24-1
25.	Disinfection and Sanitation of Buildings and Premises	41-25-1
26.	Mississippi Safe Drinking Water Act of 1997	41-26-1
27.	Mosquito Control	41-27-1
28.	Diabetes	41-28-1
29.	Poisons, Drugs and Other Controlled Substances	41-29-1
30.	Alcoholism and Alcohol Abuse Prevention, Control and Treatment	41-30-1
31.	Commitment of Alcoholics and Drug Addicts for Treatment	41-31-1
32.	Commitment of Alcoholics and Drug Addicts to Private Treatment Facilities	41-32-1
33.	Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium	41-33-1
34.	Health Care Practice Requirements Pertaining to Transmission of Hepatitis B and HIV	41-34-1
35.	Eye Inflammation of Young	41-35-1
36.	Determination of Death	41-36-1
37.	Autopsies	41-37-1
39.	Disposition of Human Bodies or Parts	41-39-1
41.	Surgical or Medical Procedures; Consents	41-41-1
42.	Family Planning	41-42-1
43.	Cemeteries and Burial Grounds	41-43-1
45.	Sexual Sterilization [Repealed]	41-45-1
47.	Transportation and Possession of Parakeets and Other Birds [Repealed]	41-47-1
49.	Regulation of Hotels and Innkeepers	41-49-1

TITLE 41. PUBLIC HEALTH (Cont'd)

		Beginning Section
51.	Animal and Poultry By-Products Disposal or Rendering Plants	41-51-1
53.	Rabies Control in Dogs and Cats	41-53-1
55.	Public Ambulance Service	41-55-1
57.	Vital Statistics	41-57-1
58.	Medical Radiation Technology	41-58-1
59.	Emergency Medical Services	41-59-1
60.	Emergency Medical Technicians — Paramedics — Use of Automated External Defibrillator	41-60-1
61.	State Medical Examiner	41-61-1
63.	Evaluation and Review of Professional Health Services Providers	41-63-1
65.	[Reserved]	
67.	Mississippi Individual On-Site Wastewater Disposal System Law	41-67-1
69.	[Reserved]	
71.	Home Health Agencies	41-71-1
73.	Hospital Equipment and Facilities Authority Act	41-73-1
75.	Ambulatory Surgical Facilities	41-75-1
77.	Licensing of Birthing Centers	41-77-1
79.	Health Problems of School Children	41-79-1
81.	Perinatal Health Care	41-81-1
83.	Utilization Review of Availability of Hospital Resources and Medical Services	41-83-1
85.	Mississippi Hospice Law of 1995	41-85-1
86.	Mississippi Children's Health Care Insurance Program Act	41-86-1
87.	Early Intervention Act for Infants and Toddlers	41-87-1
88.	Mississippi Child Immunization Act of 1994	41-88-1
89.	Infant Mortality Reduction	41-89-1
90.	Hearing Impairment of Infants and Toddlers	41-90-1
91.	Central Cancer Registry	41-91-1
93.	Osteoporosis Prevention and Treatment Education Act	41-93-1
95.	Mississippi Health Policy Act of 1994	41-95-1
97.	State Employee Wellness and Physical Fitness Programs	41-97-1
99.	Qualified Health Center Grant Program	41-99-1
101.	Mississippi Council on Obesity Prevention and Management	41-101-1
103.	Task Force on Heart Disease and Stroke Prevention	41-103-1
105.	Healthcare Coordinating Council	41-105-1

TITLE 41. PUBLIC HEALTH (Cont'd)

		Beginning Section
107.	Health Care Rights of Conscience	41-107-1
109.	Leonard Morris Chronic Kidney Disease Leadership Task Force	41-109-1
111.	Child Death Review Panel	41-111-1
112.	Maternal Mortality Review Committee	41-112-1
113.	Tobacco Education, Prevention and Cessation Program	41-113-1
114.	Restrictions on Tobacco Use in Public Facilities	41-114-1
115.	Tanning Facilities	41-115-1
117.	Nurse-Family Partnership Pilot Program	41-117-1
119.	Health Information Technology Act	41-119-1
121.	Requirements for Advertisements for Health Care Services	41-121-1
123.	Office of Mississippi Physician Workforce	41-123-1
125.	Prescribed Pediatric Extended Care Centers (PPEC)	41-125-1
127.	Telemedicine Services	41-127-1
129.	Umbilical Cord Blood Banking Program Act	41-129-1
131.	Right to Try Act	41-131-1
133.	Lay Caregivers for Hospital Patients	41-133-1
135.	Support and Promotion of Breast-Feeding in Mississippi	41-135-1

TITLE 43. PUBLIC WELFARE

CHAPTER 1.	Department of Human Services and County Departments of Public Welfare	43-1-1
3.	Blind Persons	43-3-1
5.	Schools for the Blind and Deaf	43-5-1
6.	Rights and Liabilities of Persons with Disabilities	43-6-1
7.	Council on Aging	43-7-1
9.	Old Age Assistance	43-9-1
11.	Institutions for the Aged or Infirm	43-11-1
12.	Medicaid and Human Services Transparency and Fraud Prevention Act	43-12-1
13.	Medical Assistance for the Aged; Medicaid	43-13-1
14.	Mississippi Statewide System of Care for Children and Youth	43-14-1
15.	Child Welfare	43-15-1
16.	Child Residential Home Notification Act	43-16-1
17.	Temporary Assistance to Needy Families	43-17-1
18.	Interstate Compact on the Placement of Children	43-18-1

TITLE 43. PUBLIC WELFARE (Cont'd)

Beginning Section

19. Support of Natural Children 43-19-1
20. Child Care Facilities 43-20-1
21. Youth Court 43-21-1
23. Family Courts [Repealed] 43-23-1
24. State Central Registry of Child Abuse Reports; Wide Area Telephone Service for Reporting Child Abuse [Repealed] 43-24-1
25. Interstate Compacts Relating to Juveniles 43-25-1
26. Department of Child Protection Services 43-26-1
27. Department of Youth Services 43-27-1
28. Mississippi Achieving a Better Life Experience (ABLE) Act 43-28-1
29. Persons with Disabilities 43-29-1
30. Mississippi Disability Resource Commission 43-30-1
31. Poor Persons 43-31-1
33. Housing and Housing Authorities 43-33-1
35. Urban Renewal and Redevelopment 43-35-1
37. Acquisition of Real Property Using Public Funds 43-37-1
39. Relocation Assistance 43-39-1
41. Emergency and Disaster Assistance [Repealed] 43-41-1
43. Administration of Social Security Funds 43-43-1
45. Adult Protective Services [Repealed] 43-45-1
47. Mississippi Vulnerable Persons Act 43-47-1
49. Mississippi Welfare Restructuring Program Act of 1993 [Repealed] 43-49-1
51. Family Preservation Act of 1994 43-51-1
53. Mississippi Leadership Council on Aging 43-53-1
55. Mississippi Commission for National and Community Service 43-55-1
57. Comprehensive Plan for Provision of Services to Disabled Persons [Repealed] ....
59. Mississippi Commission on the Status of Women 43-59-1
61. Mississippi Seniors and Indigents Rx Program 43-61-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER

CHAPTER 1. Department of Public Safety 45-1-1
2. Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds ... 45-2-1
3. Highway Safety Patrol 45-3-1
4. County Jail Officers Training Program 45-4-1
5. Law Enforcement Officers' Training Academy .. 45-5-1
6. Law Enforcement Officers Training Program ... 45-6-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER (Cont'd)

Beginning Section

7. County Patrol Officers 45-7-1
9. Weapons 45-9-1
10. Novelty Lighters 45-10-1
11. Fire Protection Regulations, Fire Protection and Safety in Buildings 45-11-1
12. Mississippi Fire Safety Standard and Firefighter Protection Act [For contingent repeal of this chapter, see § 45-12-21] 45-12-1
13. Fireworks and Explosives 45-13-1
14. Radiation Protection Program 45-14-1
15. High Voltage Power Lines 45-15-1
17. Civil Emergencies 45-17-1
18. Emergency Management Assistance Compact .. 45-18-1
19. Subversive Groups and Subversive Activities ... 45-19-51
21. Rock Festivals 45-21-1
23. Boiler and Pressure Vessel Safety 45-23-1
25. Identification Cards for Non-Drivers. [Repealed] 45-25-1
27. Mississippi Justice Information Center 45-27-1
29. Records 45-29-1
31. Sex Offense Criminal History Record Information Act 45-31-1
33. Registration of Sex Offenders 45-33-1
35. Identification Cards 45-35-1
37. Prevention of Youth Access to Tobacco Act 45-37-1
39. Statewide Crime Stoppers Advisory Council 45-39-1
41. Mississippi Silver Alert System 45-41-1
43. William Lee Montjoy Pool Safety Act 45-43-1
45. Mississippi Conveyance Safety Act 45-45-1
47. DNA Data Bank 45-47-1

TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE

Chapter 1. County and Municipal Prisons and Prisoners .. 47-1-1
3. Removal of Prisoners 47-3-1
4. Privately Operated Correctional Facilities 47-4-1
5. Correctional System 47-5-1
7. Probation and Parole 47-7-1

TITLE 49. CONSERVATION AND ECOLOGY

Chapter 1. General Provisions 49-1-1
2. Department of Environmental Quality 49-2-1
3. Fisheries and Wildlife Research 49-3-1

TITLE 49. CONSERVATION AND ECOLOGY (Cont'd)

Beginning Section

4. Mississippi Department of Wildlife, Fisheries and Parks 49-4-1
5. Fish, Game and Bird Protection and Refuges ... 49-5-1
6. Motor Vehicle and Boat Replacement Program 49-6-1
7. Hunting and Fishing 49-7-1
8. Importation, Sale and Possession of Inherently Dangerous Wild Animals 49-8-1
9. Mussels 49-9-1
10. Wildlife Violator Compact 49-10-1
11. Private Shooting Preserves 49-11-1
13. Commercial Quail 49-13-1
15. Seafood 49-15-1
17. Pollution of Waters, Streams, and Air 49-17-1
18. Mississippi Liability of Persons Responding to Oil Spills Act 49-18-1
19. Forests and Forest Protection 49-19-1
20. Mississippi River Timberlands Control Act [Repealed] 49-20-1
21. Interstate Environmental Compact 49-21-1
23. Outdoor Advertising 49-23-1
25. Junkyards 49-25-1
26. Channel Maintenance Act 49-26-1
27. Coastal Wetlands Protection Act 49-27-1
28. Shoreline and Beach Preservation Districts 49-28-1
29. Environmental Protection Council [Repealed] .. 49-29-1
31. Mississippi Multimedia Pollution Prevention Act 49-31-1
33. Mississippi Agricultural and Forestry Activity Act 49-33-1
35. Mississippi Brownfields Voluntary Cleanup and Redevelopment; Remediation of Property on National Priorities List 49-35-1
37. Statewide Scientific Information Management 49-37-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

CHAPTER 1. Navigable Waters 51-1-1
2. Mississippi Marine Litter Act 51-2-1
3. Water Resources; Regulation and Control 51-3-1
4. Mississippi Scenic Streams Stewardship Act ... 51-4-1
5. Subsurface Waters; Well Drillers 51-5-1
7. Water Management Districts 51-7-1
8. Joint Water Management Districts 51-8-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL (Cont'd)

Beginning Section

9. Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act 51-9-1
11. Pearl River Basin Development District 51-11-1
13. Tombigbee Valley Authority and Water Management District 51-13-1
15. Pat Harrison Waterway Commission and District 51-15-1
17. Big Black River Basin District 51-17-1
19. West Central Mississippi Waterway Commission [Repealed] 51-19-1
21. Lower Mississippi River Basin Development District [Repealed] 51-21-1
23. Lower Yazoo River Basin District. [Repealed] .. 51-23-1
25. Yellow Creek Watershed Authority 51-25-1
27. Tennessee-Tombigbee Waterway Compact 51-27-1
29. Drainage Districts with Local Commissioners 51-29-1
31. Drainage Districts with County Commissioners 51-31-1
33. Provisions Common to Drainage Districts and Swamp Land Districts 51-33-1
35. Flood Control 51-35-1
37. Watershed Districts 51-37-1
39. Storm Water Management Districts 51-39-1
41. Public Water Authorities 51-41-1

TITLE 53. OIL, GAS, AND OTHER MINERALS

Chapter 1. State Oil and Gas Board 53-1-1
3. Development, Production and Distribution of Gas and Oil 53-3-1
5. Geological and Mineral Survey 53-5-1
7. Surface Mining and Reclamation of Land 53-7-1
9. Surface Coal Mining and Reclamation of Land 53-9-1
10. Interstate Mining Compact 53-10-1
11. Mississippi Geologic Sequestration of Carbon Dioxide Act 53-11-1

TITLE 55. PARKS AND RECREATION

Chapter 1. Mississippi Recreational Advisory Council [Repealed] 55-1-1
3. State Parks and Forests 55-3-1
5. Federal Parks and National Parkways 55-5-1

TITLE 55. PARKS AND RECREATION (Cont'd)

Beginning Section
7. Bridge and Park Commissions 55-7-1
9. County and Municipal Facilities 55-9-1
11. Harrison County Parkway 55-11-1
13. Natchez Trace Parkway 55-13-1
15. Commemorative Parks and Monuments 55-15-1
17. International Gardens of Mississippi 55-17-1
19. Bienville Recreational District 55-19-1
21. Mississippi Zoological Park and Garden Districts 55-21-1
23. Mississippi Veterans Memorial Stadium 55-23-1
24. Mississippi Coast Coliseum Commission 55-24-1
25. Rails-to-Trails Recreational District 55-25-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT

Chapter 1. Mississippi Development Authority 57-1-1
3. Agriculture and Industry Program 57-3-1
4. Industrial Development Fund 57-4-1
5. Industrial Parks and Districts 57-5-1
7. Sale or Development of Airport Lands, or Other Lands, for Industrial Purposes 57-7-1
9. Industrial Plant Training 57-9-1
10. Small Business Assistance 57-10-1
11. Market and Industrial Studies and Research ... 57-11-1
13. Research and Development Center 57-13-1
15. Marine Resources 57-15-1
17. Forest Products Utilization Laboratory [Repealed] 57-17-1
18. Renewable Natural Resources Research Act of 1994 57-18-1
19. Food Technology Laboratory 57-19-1
21. State Chemical Laboratory 57-21-1
23. Pharmaceutical Product Development and Utilization 57-23-1
25. Southern States Energy Compact 57-25-1
26. Tourism Project Incentive Program; Theme Parks, Entertainment Centers, Scenic Attractions, etc. 57-26-1
27. Regional Tourist Promotion Councils 57-27-1
28. Tourism Project Incentive Program; Entertainment Districts, etc. 57-28-1
29. Travel and Tourism 57-29-1
30. Family-Oriented Enterprises 57-30-1
31. County Industrial Development Authorities 57-31-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section

32. Southeast Mississippi Industrial Council 57-32-1
33. Southern Growth Policies Agreement 57-33-1
34. Alabama-Mississippi Joint Economic Development Authority 57-34-1
35. Tennessee River Valley Association 57-35-1
36. Chickasaw Trail Economic Development Compact [Repealed] 57-36-1
37. Transportation Planning Council [Repealed] 57-37-1
39. Energy and Transportation Planning 57-39-1
40. Energy Infrastructure Revolving Loan Program 57-40-1
41. Financing Industrial Enterprise Projects 57-41-1
43. Railroad Revitalization 57-43-1
44. Local Governments Freight Rail Service Projects 57-44-1
45. Mississippi-Louisiana-Alabama Rapid Rail Transit Compact 57-45-1
46. Mississippi Railroad Improvements Fund 57-46-1
47. Southeast Interstate Low-Level Radioactive Waste Management Compact 57-47-1
49. Nuclear Waste Storage and Disposal 57-49-1
51. Enterprise Zones [Repealed] 57-51-1
53. Corporate Headquarters Incentive Program [Repealed] 57-53-1
54. Advanced Technology Initiative [Repealed] 57-54-1
55. Universities Research Institutes 57-55-1
56. Mississippi Technology Transfer Office 57-56-1
57. Export Trade Development 57-57-1
59. Mississippi Capital Companies [Repealed] 57-59-1
61. Mississippi Business Investment Act 57-61-1
62. Mississippi Advantage Jobs Act 57-62-1
63. Statewide Economic Development and Planning Act 57-63-1
64. Regional Economic Development 57-64-1
65. Mississippi International Trade Institute 57-65-1
67. Mississippi Superconducting Super Collider Act 57-67-1
69. Mississippi Minority Business Enterprise Act .. 57-69-1
71. Mississippi Small Enterprise Development Finance Act 57-71-1
73. Economic Development Reform Act 57-73-1
75. Mississippi Major Economic Impact Act 57-75-1
77. Venture Capital Act of 1994 57-77-1
79. Mississippi Small Town Development Act 57-79-1
80. Growth and Prosperity Act 57-80-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section
81. Mississippi Science and Technology Commission [Repealed] 57-81-1
83. Mississippi Technology, Inc. Liaison Committee 57-83-1
85. Mississippi Rural Impact Act 57-85-1
87. Mississippi Broadband Technology Development Act 57-87-1
89. Mississippi Motion Picture Incentive Act 57-89-1
91. Economic Redevelopment Act 57-91-1
93. Mississippi Existing Industry Productivity Loan Program 57-93-1
95. Mississippi Job Protection Act 57-95-1
97. Mississippi Delta Revitalization Act of 2006 57-97-1
99. Mississippi Major Economic Impact Withholding Rebate Incentive Program 57-99-1
100. Existing Industry Withholding Rebate Incentive Program 57-100-1
101. Mississippi Major Economic Impact Authority Component Construction Material Costs Rebate Program 57-101-1
103. Technology Based Business Capital Assistance Programs 57-103-1
105. Qualified Equity Investment Tax Credits and Public Entity Financing Arrangements 57-105-1
107. Mississippi Workforce Training Projects 57-107-1
111. Mississippi Small Business and Existing Forestry Industry Enterprise Participating Loan Program 57-111-1
113. Business Enterprise Tax Exemptions 57-113-1
115. Mississippi Small Business Investment Company Act 57-115-1
117. Mississippi Health Care Industry Zone Act [Repealed effective July 1, 2022] 57-117-1

TITLE 59. PORTS, HARBORS, LANDINGS AND WATERCRAFT

CHAPTER 1. Harbor or Port Commissions; Powers of Political Subdivision; Pilotage 59-1-1
3. Ports of Entry 59-3-1
5. State Ports and Harbors 59-5-1
6. Compact for Development of Deep Draft Harbor and Terminal 59-6-1
7. County and Municipal Harbors 59-7-1
9. County Port Authority or Development Commission 59-9-1

TITLE 59. PORTS, HARBORS, LANDINGS AND WATERCRAFT (Cont'd)

		Beginning Section
11.	County Port and Harbor Commission	59-11-1
13.	Harbor Improvements by Coast Counties	59-13-1
15.	Small Craft Harbors	59-15-1
17.	State Inland Ports	59-17-1
19.	Landings	59-19-1
21.	Boats and Other Vessels	59-21-1
23.	Alcohol Boating Safety Act	59-23-1
25.	Certificates of Title for Boats and Other Vessels	59-25-1

TITLE 61. AVIATION

CHAPTER	1.	Transportation Commission	61-1-1
	3.	Airport Authorities	61-3-1
	4.	Mississippi Wayport Authority Act	61-4-1
	5.	Acquisition, Disposition and Support of Airport Facilities	61-5-1
	7.	Airport Zoning	61-7-1
	9.	Incorporation of Airport Into Corporate Boundaries of Municipality	61-9-1
	11.	Operation of Aircraft; Certification and Licensing of Pilots and Aircraft	61-11-1
	13.	Aircraft for Use of Governor, State Departments and Agencies	61-13-1
	15.	Registration of Aircraft	61-15-1
	17.	Concealing or Misrepresenting Aircraft Identification Number; Non-Conforming Aircraft Fuel Containers	61-17-1
	19.	Aviation Hazards	61-19-1

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS

CHAPTER	1.	Driver's License	63-1-1
	2.	Mandatory Use of Safety Seat Belts	63-2-1
	3.	Traffic Regulations and Rules of the Road	63-3-1
	5.	Size, Weight and Load	63-5-1
	7.	Equipment and Identification	63-7-1
	9.	Traffic Violations Procedure	63-9-1
	10.	Nonresident Traffic Violator Compact	63-10-1
	11.	Implied Consent Law	63-11-1
	13.	Inspection of Motor Vehicles	63-13-1
	15.	Motor Vehicle Safety — Responsibility	63-15-1
	16.	Public Safety Verification and Enforcement Act [Repealed effective July 1, 2018]	63-16-1

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS (Cont'd)

Beginning Section

17. Manufacture, Sales and Distribution 63-17-1
19. Motor Vehicle Sales Finance Law 63-19-1
21. Motor Vehicle Titles 63-21-1
23. Abandoned Motor Vehicles 63-23-1
25. Motor Vehicle Chop Shop, Stolen and Altered Property Act 63-25-1
27. Disclosure of Use of Nonoriginal Replacement Parts 63-27-1
29. Mississippi Vehicle Protection Product Act 63-29-1
31. Operating Off-Road Vehicles 63-31-1
33. Miscellaneous Provisions 63-33-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES

Chapter

1. Transportation Department 65-1-1
2. State Transportation Arbitration Board 65-2-1
3. State Highway System 65-3-1
4. Economic Development Highway Act 65-4-1
5. Controlled Access Facilities 65-5-1
7. Public Roads and Streets; Private Way 65-7-1
9. State Aid Roads in Counties 65-9-1
10. County Major Feeder Road System [Repealed] 65-10-1
11. County Highway Aid 65-11-1
13. Highway and Street Revenue Bond Authority 65-13-1
15. County Funds for Roads and Bridges 65-15-1
17. County Road Officials 65-17-1
18. Local System Road Program 65-18-1
19. Separate Road Districts 65-19-1
21. Bridges; General Provisions 65-21-1
23. Bridges; Boundary and Other Waters 65-23-1
25. Mississippi River Bridges 65-25-1
26. Tennessee-Tombigbee Waterway Bridges 65-26-1
27. Ferries; General Provisions 65-27-1
29. Ferries in Certain Counties 65-29-1
31. Hospitality Stations on Highways 65-31-1
33. Sea Walls 65-33-1
37. Local System Bridge Replacement and Rehabilitation Program 65-37-1
39. Gaming Counties Bond Sinking Fund 65-39-1
41. Mississippi Scenic Byways 65-41-1
43. Toll Roads and Toll Bridges 65-43-1

TITLE 67. ALCOHOLIC BEVERAGES

Beginning Section

CHAPTER 1. Local Option Alcoholic Beverage Control 67-1-1
3. Sale of Light Wine, Beer, and Other Alcoholic Beverages 67-3-1
5. Native Wines 67-5-1
7. Beer Industry Fair Dealing Act 67-7-1
9. Possession or Transportation of Alcoholic Beverages, Light Wine, or Beer 67-9-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS

CHAPTER 1. Agriculture and Commerce Department; Council on Agriculture 69-1-1
2. Mississippi Farm Reform Act 69-2-1
3. Agricultural Seeds 69-3-1
5. Fairs; Stock Shows; Improvement of Livestock 69-5-1
7. Markets and Marketing; Domestic Fish Farming 69-7-1
8. Beef Promotion And Research Program ....
9. Soybean Promotion Board 69-9-1
10. Rice Promotion Board 69-10-1
11. Swine 69-11-1
13. Stock Laws, Estrays 69-13-1
15. Board of Animal Health; Livestock and Animal Diseases 69-15-1
17. Livestock Biologics, Drugs and Vaccines 69-17-1
19. Regulation of Professional Services 69-19-1
21. Crop Spraying and Licensing of Aerial Applicators 69-21-1
23. Mississippi Pesticide Law 69-23-1
24. Fertilizing Materials and Additives 69-24-1
25. Plants, Plant and Bee Diseases 69-25-1
26. Pest Control Compact 69-26-1
27. Soil Conservation 69-27-1
28. Protection and Conservation of Agricultural Lands 69-28-1
29. Livestock Brands, Theft or Loss of Livestock and Protective Associations 69-29-1
31. Regulation of Moisture-Measuring Devices 69-31-1
33. Pecan Harvesting 69-33-1
34. Milk Producers Transportation Cost Assistance Loan Program 69-34-1
35. Mississippi Dairy Promotion Act 69-35-1
36. Southern Dairy Compact 69-36-1
37. Mississippi Boll Weevil Management Act 69-37-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

Beginning Section

39. Agricultural Liming Materials 69-39-1
41. Mississippi Agribusiness Council Act of 1993 ... 69-41-1
42. Program to Encourage Growth in Mississippi Agribusiness Industry 69-42-1
43. Mississippi Ratite Council and Promotion Board 69-43-1
44. Mississippi Corn Promotion Board 69-44-1
45. Mississippi Agricultural Promotions Program Act 69-45-1
46. Mississippi Land, Water and Timber Resources Act 69-46-1
47. Organic Certification Program 69-47-1
48. Peanut Promotion Board 69-48-1
49. Field Crop Products 69-49-1
51. Ethanol, Anhydrous Alcohol and Wet Alcohol ... 69-51-1
53. Agritourism [Repealed effective July 1, 2018] .. 69-53-1

TITLE 71. LABOR AND INDUSTRY

CHAPTER
1. Employer and Employee 71-1-1
3. Workers' Compensation 71-3-1
5. Unemployment Compensation 71-5-1
7. Drug and Alcohol Testing of Employees 71-7-1
9. Medical Savings Account Act 71-9-1
11. Employment Protection Act 71-11-1
13. Prohibition Against Employer Intimidation Act 71-13-1
15. Mississippi Employment Fairness Act 71-15-1

TITLE 73. PROFESSIONS AND VOCATIONS

CHAPTER
1. Architects 73-1-1
2. Landscape Architectural Practice 73-2-1
3. Attorneys at Law 73-3-1
4. Auctioneers 73-4-1
5. Barbers 73-5-1
6. Chiropractors 73-6-1
7. Cosmetologists 73-7-1
9. Dentists 73-9-1
10. Dietitians 73-10-1
11. Practice of Funeral Service and Funeral Directing 73-11-1
13. Engineers and Land Surveyors 73-13-1
14. Hearing Aid Dealers 73-14-1
15. Nurses 73-15-1

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

Beginning Section

17. Nursing Home Administrators 73-17-1
19. Optometry and Optometrists 73-19-1
21. Pharmacists 73-21-1
22. Orthotics and Prosthetics 73-22-1
23. Physical Therapists 73-23-1
24. Mississippi Occupational Therapy Practice Act 73-24-1
25. Physicians 73-25-1
26. Physician Assistants 73-26-1
27. Podiatrists 73-27-1
29. Polygraph Examiners 73-29-1
30. Licensed Professional Counselors 73-30-1
31. Psychologists 73-31-1
33. Public Accountants 73-33-1
34. Real Estate Appraisers 73-34-1
35. Real Estate Brokers 73-35-1
36. Registered Foresters 73-36-1
37. Sanitarians 73-37-1
38. Speech Pathologists and Audiologists 73-38-1
39. Veterinarians 73-39-1
41. Athlete Agents [Repealed] 73-41-1
42. Uniform Athlete Agents Law 73-42-1
43. State Board of Medical Licensure 73-43-1
45. Information to Be Included in Prescriptions 73-45-1
47. Occupational Board Compliance Act of 2017 73-47-1
49. Health Care Provider Licensing Boards 73-49-1
50. Licensing, Certifying or Registering Military-trained Individuals or Spouses to Lawfully Practice Occupation 73-50-1
51. Unlicensed Practice of Profession 73-51-1
52. Licensure Records 73-52-1
53. Licensing and Regulation of Social Workers 73-53-1
54. Marriage and Family Therapists 73-54-1
55. Mississippi Athletic Trainers Licensure Act 73-55-1
57. Mississippi Respiratory Care Practice Act 73-57-1
59. Residential Builders and Remodelers 73-59-1
60. Home Inspectors 73-60-1
61. Tattooing and Body Piercing 73-61-1
63. Registered Professional Geologists Practice Act 73-63-1
65. Professional Art Therapists 73-65-1
67. Professional Massage Therapists 73-67-1
69. Mississippi Electronic Protection Licensing Act 73-69-1
71. Acupuncture Practice Act 73-71-1
73. Mississippi Certified Interior Designer Act 73-73-1

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

Beginning Section
75. Licensed Behavior Analysts 73-75-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 1. Uniform Commercial Code — Revised Article 1. General Provisions 75-1-101
2. Uniform Commercial Code — Sales 75-2-101
2A. Uniform Commercial Code — Leases 75-2A-101
3. Uniform Commercial Code — Negotiable Instruments 75-3-101
4. Uniform Commercial Code—Bank Deposits and Collections 75-4-101
4A. Uniform Commercial Code—Funds Transfers .. 75-4A-101
5. Uniform Commercial Code—Revised Article 5. Letters of Credit 75-5-101
6. Uniform Commercial Code—Bulk Transfers 75-6-101
7. Uniform Commercial Code—Documents of Title 75-7-101
8. Uniform Commercial Code—Revised Article 8. Investment Securities 75-8-101
9. Uniform Commercial Code—Secured Transactions 75-9-101
10. Uniform Commercial Code—Effective Date and Repealer 75-10-101
11. Uniform Commercial Code—Effective Date and Transition Provisions: 1977 Amendments 75-11-101
12. Uniform Electronic Transactions Act 75-12-1
13. Bills, Notes and Other Writings 75-13-1
15. Mississippi Money Transmitters Act 75-15-1
17. Interest, Finance Charges, and Other Charges 75-17-1
18. Revolving Charge Agreements; Credit Cards [Repealed] 75-18-1
19. Seals 75-19-1
21. Trusts and Combines in Restraint or Hindrance of Trade 75-21-1
23. Fair Trade Laws 75-23-1
24. Regulation of Business for Consumer Protection 75-24-1
25. Registration of Trademarks and Labels 75-25-1
26. Mississippi Uniform Trade Secrets Act 75-26-1
27. Weights and Measures 75-27-1
29. Sale and Inspection of Food and Drugs 75-29-1
31. Milk and Milk Products 75-31-1
33. Meat, Meat-Food and Poultry Regulation and Inspection 75-33-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

		Beginning Section
35.	Meat Inspection	75-35-1
37.	Operation of Frozen Food Locker Plants [Repealed]	75-37-1
39.	Sale of Baby Chicks	75-39-1
40.	Importation and Sale of Animals or Birds	75-40-1
41.	Gins	75-41-1
43.	Farm Warehouses	75-43-1
44.	Grain Warehouses	75-44-1
45.	Commercial Feeds and Grains	75-45-1
47.	Commercial Fertilizers	75-47-1
49.	Factory-Built Homes	75-49-1
51.	Water Heaters	75-51-1
53.	Paints, Varnishes and Similar Materials	75-53-1
55.	Gasoline and Petroleum Products	75-55-1
56.	Antifreeze and Summer Coolants	75-56-1
57.	Liquefied Petroleum Gases	75-57-1
58.	Mississippi Natural Gas Marketing Act	75-58-1
59.	Correspondence Courses	75-59-1
60.	Proprietary Schools and Colleges	75-60-1
61.	Manufacture and Sale of Jewelry and Optical Equipment	75-61-1
63.	Sales of Cemetery Merchandise and Funeral Services	75-63-1
65.	Going Out of Business Sales; Unsolicited Goods	75-65-1
66.	Home Solicitation Sales	75-66-1
67.	Loans	75-67-1
69.	Farm Loan Bonds	75-69-1
71.	Mississippi Securities Act of 2010	75-71-101
72.	Business Takeovers	75-72-1
73.	Hotels and Innkeepers	75-73-1
74.	Youth Camps	75-74-1
75.	Amusements, Exhibitions and Athletic Events	75-75-1
76.	Mississippi Gaming Control Act	75-76-1
77.	Repurchase of Inventories From Retailers Upon Termination of Contract	75-77-1
79.	Pulpwood Scaling and Practices	75-79-1
81.	Dance Studio Lessons	75-81-101
83.	Health Spas	75-83-1
85.	Transient Vendor	75-85-1
87.	Contracts Between Out-of-State Principals and Commissioned Sales Representatives	75-87-1
89.	Mississippi Commodities Enforcement Act	75-89-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

			Beginning Section
	91.	Truth in Music Advertising	75-91-1
	93.	Fictitious Business Name Registration Act	75-93-1
	95.	Business of Purchasing Precious Items for Resale	75-95-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS

Chapter	1.	Public Service Commission	77-1-1
	2.	Public Utilities Staff	77-2-1
	3.	Regulation of Public Utilities	77-3-1
	5.	Electric Power	77-5-1
	6.	Municipal Gas Authority of Mississippi Law	77-6-1
	7.	Motor Carriers	77-7-1
	8.	Transportation Network Companies	77-8-1
	9.	Railroads and Other Common Carriers	77-9-1
	11.	Gas Pipelines and Distribution Systems	77-11-1
	13.	Regulation of Excavations Near Underground Utility Facilities	77-13-1
	15.	Local Natural Gas Districts	77-15-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

Chapter	1.	General Provisions Relative to Corporations	79-1-1
	3.	Business Corporations [Repealed]	79-3-1
	4.	Mississippi Business Corporation Act	79-4-1.01
	5.	Business Development Corporations [Repealed]	79-5-1
	6.	Foreign Limited Liability Companies [Repealed]	79-6-1
	7.	Small Business Investment Companies	79-7-1
	9.	Professional Corporations [Repealed]	79-9-1
	10.	Mississippi Professional Corporation Act	79-10-1
	11.	Nonprofit, Nonshare Corporations and Religious Societies	79-11-1
	12.	Partnerships [Repealed]	79-12-1
	13.	Uniform Partnership Act (1997)	79-13-101
	14.	Mississippi Uniform Limited Partnership Act	79-14-101
	15.	Investment Trusts	79-15-1
	16.	Mississippi Registration of Foreign Business Trusts Act	79-16-1
	17.	Agricultural Associations; Conversion to Corporate Form	79-17-1
	19.	Agricultural Cooperative Marketing Associations	79-19-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS (Cont'd)

		Beginning Section
21.	Aquatic Products Marketing Association	79-21-1
22.	Mississippi Aquaculture Act of 1988	79-22-1
23.	Commercial and Proprietary Information	79-23-1
25.	Mississippi Shareholder Protection Act	79-25-1
27.	Mississippi Control Share Act	79-27-1
29.	Revised Mississippi Limited Liability Company Act	79-29-101
31.	Mississippi Registration of Foreign Limited Liability Partnerships Act [Repealed]	79-31-1
33.	Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations	79-33-1
35.	The Mississippi Registered Agents Act	79-35-1
37.	Mississippi Entity Conversion and Domestication Act	79-37-101

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS

Chapter	1.	Department of Banking and Consumer Finance	81-1-1
	3.	Incorporation and Organization of Banks	81-3-1
	5.	General Provisions Relating to Banks and Banking	81-5-1
	7.	Branch Banks	81-7-1
	8.	Regional Banking Institutions	81-8-1
	9.	Insolvent Banks	81-9-1
	11.	Savings and Loan Associations [Repealed]	81-11-1
	12.	Savings Associations Law	81-12-1
	13.	Credit Unions	81-13-1
	14.	Savings Bank Law	81-14-1
	15.	Mississippi Rural Credit Law	81-15-1
	17.	Farmers' Credit Associations	81-17-1
	18.	Mississippi S.A.F.E. Mortgage Act	81-18-1
	19.	Consumer Loan Broker Act	81-19-1
	20.	Consumer Complaints and Disputes Against Mortgage Companies	81-20-1
	21.	Insurance Premium Finance Companies	81-21-1
	22.	Mississippi Debt Management Services Act	81-22-1
	23.	Interstate Bank Branching	81-23-1
	25.	The Mississippi International Banking Act	81-25-1
	27.	Multistate, State and Limited Liability Trust Institutions	81-27-1.001
	29.	Lender Trade Name and Trademark Use	81-29-1

TITLE 83. INSURANCE

			Beginning Section
CHAPTER	1.	Department of Insurance	83-1-1
	2.	Competitive Rating for Property and Casualty Insurance	83-2-1
	3.	Commissioner of Insurance, Rating Bureau and Rates	83-3-1
	5.	General Provisions Relative to Insurance and Insurance Companies	83-5-1
	6.	Registration and Examination of Insurers	83-6-1
	7.	Life Insurance	83-7-1
	9.	Accident, Health and Medicare Supplement Insurance	83-9-1
	11.	Automobile Insurance	83-11-1
	13.	Fire Insurance	83-13-1
	14.	Homeowners' and Farmowners' Insurance [Repealed]	83-14-1
	15.	Title Insurance	83-15-1
	17.	Insurance Agents, Solicitors, or Adjusters	83-17-1
	18.	Insurance Administrators and Managing General Agents	83-18-1
	19.	Domestic Companies	83-19-1
	20.	Domicile Change for Domestic and Foreign Insurers	83-20-1
	21.	Foreign Companies	83-21-1
	23.	Insolvent Insurance Companies; Insurance Guaranty Association	83-23-1
	24.	Insurers Rehabilitation and Liquidation Act	83-24-1
	25.	Co-operative Insurance	83-25-1
	27.	Surety Companies	83-27-1
	29.	Fraternal Societies	83-29-1
	30.	Larger Fraternal Benefit Societies	83-30-1
	31.	Mutual Companies	83-31-1
	33.	Reciprocal Insurance	83-33-1
	34.	Windstorm Underwriting Association	83-34-1
	35.	Underwriting Association [Repealed]	83-35-1
	36.	Joint Underwriting Association for Medical Malpractice Insurance	83-36-1
	37.	Burial Associations	83-37-1
	38.	Mississippi Residential Property Insurance Underwriting Association Law	83-38-1
	39.	Bail Bonds and Bondsmen	83-39-1
	41.	Hospital and Medical Service Associations and Contracts	83-41-1

TITLE 83. INSURANCE (Cont'd)

		Beginning Section
43.	Nonprofit Dental Service Corporations	83-43-1
45.	Nonprofit, Community Service Blood Supply Plans	83-45-1
47.	Nonprofit Medical Liability Insurance Corporations	83-47-1
48.	Medical Malpractice Insurance Availability Act	83-48-1
49.	Legal Expense Insurance	83-49-1
51.	Dental Care Benefits	83-51-1
53.	Credit Life and Credit Disability Insurance	83-53-1
54.	Mississippi Creditor-Placed Insurance Act	83-54-1
55.	Risk Retention Act	83-55-1
57.	Home Warranties [Repealed].	83-57-1
58.	New Home Warranty Act	83-58-1
59.	Business Transacted With Producer Controlled Insurer Act	83-59-1
61.	Voluntary Basic Health Insurance Coverage Law	83-61-1
62.	Health Savings Accounts	83-62-1
63.	Small Employer Health Benefit Plans	83-63-1
64.	Health Discount Plans	83-64-1
65.	Regulation of Vehicle Service Contracts	83-65-101
67.	Utilization of Modern Systems for Holding and Transferring Securities Without Physical Delivery	83-67-1
69.	Interstate Insurance Product Regulation Compact	83-69-1
71.	Unfair Discrimination Against Subjects of Abuse in Health, Life, and Disability Income Insurance	83-71-1
73.	Portable Electronics Insurance	83-73-1
75.	Homeowners Insurance Discount for Hurricane or Windstorm Damage Mitigation	83-75-1
77.	Health Care Sharing Ministries	83-77-1
79.	Property Insurance Clarity Act	83-79-1
81.	Mississippi Direct Primary Care Act	83-81-1
83.	Limited Lines Travel Insurance Act	83-83-1
85.	Own Risk and Solvency Assessment Act	83-85-1

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

Chapter	1.	Assignment for Benefit of Creditors	85-1-1
	3.	Exempt Property	85-3-1
	5.	Joint and Several Debtors	85-5-1
	7.	Liens	85-7-1

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP (Cont'd)

			Beginning Section
	8.	Uniform Federal Lien Registration Act	85-8-1
	9.	Debt Adjusting or Credit Arranging [Repealed].	85-9-1
	11.	Mississippi Uniform State Tax Lien Registration Act	85-11-1
	13.	Automated Data Match System for Identifying and Seizing Financial Assets of Obligors Identified by Department of Revenue	85-13-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

CHAPTER	1.	Gambling and Future Contracts	87-1-1
	3.	Power and Letters of Attorney	87-3-1
	5.	Principal and Surety	87-5-1
	7.	Improvements to Real Property	87-7-1
	9.	General Provisions	87-9-1

TITLE 89. REAL AND PERSONAL PROPERTY

CHAPTER	1.	Land and Conveyances	89-1-1
	2.	Liability of Recreational Landowners	89-2-1
	3.	Acknowledgments	89-3-1
	5.	Recording of Instruments	89-5-1
	6.	Mississippi Plane Coordinate System	89-6-1
	7.	Landlord and Tenant	89-7-1
	8.	Residential Landlord and Tenant Act	89-8-1
	9.	Condominiums	89-9-1
	11.	Escheats	89-11-1
	12.	Uniform Disposition of Unclaimed Property Act	89-12-1
	13.	Party Fences	89-13-1
	15.	Party Walls	89-15-1
	17.	Salvage	89-17-1
	19.	Mississippi Conservation Easements	89-19-1
	21.	Uniform Disclaimer of Property Interests Act	89-21-1
	23.	Mississippi Uniform Environmental Covenants Act	89-23-1
	25.	Mississippi Uniform Statutory Rule Against Perpetuities	89-25-1

TITLE 91. TRUSTS AND ESTATES

CHAPTER	1.	Descent and Distribution	91-1-1
	3.	Uniform Simultaneous Death Law	91-3-1
	5.	Wills and Testaments	91-5-1
	7.	Executors and Administrators	91-7-1

TITLE 91. TRUSTS AND ESTATES (Cont'd)

			Beginning Section
	8.	Mississippi Uniform Trust Code	91-8-101
	9.	Trusts and Trustees	91-9-1
	11.	Fiduciary Security Transfers	91-11-1
	13.	Fiduciary Investments	91-13-1
	15.	Release of Powers of Appointment	91-15-1
	17.	Mississippi Principal and Income Act of 2013	91-17-101
	19.	Gifts to Minors [Repealed]	91-19-1
	20.	Transfers to Minors	91-20-1
	21.	Uniform Transfer-on-Death Security Registration Act	91-21-1
	23.	Revised Uniform Fiduciary Access to Digital Assets Act	91-23-1

TITLE 93. DOMESTIC RELATIONS

CHAPTER	1.	Marriage	93-1-1
	3.	Husband and Wife	93-3-1
	5.	Divorce and Alimony	93-5-1
	7.	Annulment of Marriage	93-7-1
	9.	Bastardy	93-9-1
	11.	Enforcement of Support of Dependents	93-11-1
	12.	Enforcement of Child Support Orders from Foreign Jurisdictions	93-12-1
	13.	Guardians and Conservators	93-13-1
	14.	Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	93-14-101
	15.	Mississippi Termination of Parental Rights Law	93-15-1
	16.	Grandparents' Visitation Rights	93-16-1
	17.	Adoption, Change of Name, and Legitimation of Children	93-17-1
	19.	Removal of Disability of Minority	93-19-1
	21.	Protection from Domestic Abuse	93-21-1
	22.	Uniform Interstate Enforcement of Domestic Violence Protection Orders	93-22-1
	23.	Uniform Child Custody Jurisdiction Act [Repealed]	93-23-1
	25.	Uniform Interstate Family Support Act	93-25-1
	27.	Uniform Child Custody Jurisdiction and Enforcement Act	93-27-101
	29.	Uniform Child Abduction Prevention Act	93-29-1
	31.	Supporting and Strengthening Families Act	93-31-1

TITLE 95. TORTS

CHAPTER	1.	Libel and Slander	95-1-1

TITLE 95. TORTS (Cont'd)

Beginning Section
3. Nuisances 95-3-1
5. Trespass 95-5-1
7. Liability Exemption for Donors of Food 95-7-1
9. Liability Exemption for Volunteers and Sports Officials 95-9-1
11. Liability Exemption for Equine and Livestock Activities 95-11-1
13. Liability Exemption for Noise Pollution by Sport-shooting Ranges 95-13-1
15. Liability Exemption for Report of Suspicious Activity or Behavior 95-15-1

TITLE 97. CRIMES

CHAPTER
1. Conspiracy, Accessories and Attempts 97-1-1
3. Crimes Against the Person 97-3-1
5. Offenses Affecting Children 97-5-1
7. Crimes Against Sovereignty or Administration of Government 97-7-1
9. Offenses Affecting Administration of Justice 97-9-1
11. Offenses Involving Public Officials 97-11-1
13. Election Crimes 97-13-1
15. Offenses Affecting Highways, Ferries and Waterways 97-15-1
17. Crimes Against Property 97-17-1
19. False Pretenses and Cheats 97-19-1
21. Forgery and Counterfeiting 97-21-1
23. Offenses Affecting Trade, Business and Professions 97-23-1
25. Offenses Affecting Railroads, Public Utilities and Carriers 97-25-1
27. Crimes Affecting Public Health 97-27-1
29. Crimes Against Public Morals and Decency 97-29-1
31. Intoxicating Beverage Offenses 97-31-1
32. Tobacco Offenses 97-32-1
33. Gambling and Lotteries 97-33-1
35. Crimes Against Public Peace and Safety 97-35-1
37. Weapons and Explosives 97-37-1
39. Dueling 97-39-1
41. Cruelty to Animals 97-41-1
43. Racketeer Influenced and Corrupt Organization Act (RICO) 97-43-1
44. Mississippi Streetgang Act 97-44-1

TITLE 97. CRIMES (Cont'd)

Beginning Section
45. Computer Crimes and Identity Theft 97-45-1

TITLE 99. CRIMINAL PROCEDURE

Chapter
1. General Provisions; Time Limitations; Costs ... 99-1-1
3. Arrests 99-3-1
5. Bail 99-5-1
7. Indictment 99-7-1
9. Process 99-9-1
11. Jurisdiction and Venue 99-11-1
13. Insanity Proceedings 99-13-1
15. Pretrial Proceedings 99-15-1
17. Trial 99-17-1
18. Office of State Public Defender 99-18-1
19. Judgment, Sentence, and Execution 99-19-1
20. Community Service Restitution 99-20-1
21. Fugitives From Other States 99-21-1
23. Peace Bonds 99-23-1
25. Forms 99-25-1
27. Proceedings for Intoxicating Beverage Offenses 99-27-1
29. Vagrancy Proceedings 99-29-1
31. Obscene Publications Proceedings [Repealed] .. 99-31-1
33. Prosecutions Before Justice Court Judges 99-33-1
35. Appeals 99-35-1
36. Victim Assistance Coordinator 99-36-1
37. Restitution to Victims of Crimes 99-37-1
38. Crime Victim's Escrow Account Act 99-38-1
39. Post-Conviction Proceedings 99-39-1
40. Indigent Appeals Division 99-40-1
41. Mississippi Crime Victims' Compensation Act .. 99-41-1
43. Mississippi Crime Victims' Bill of Rights 99-43-1
45. Statewide Automated Victim Information and Notification System 99-45-1
47. Victim of Domestic Violence, Sexual Assault or Stalking Address Confidentiality Program 99-47-1
49. Preservation and Accessibility of Biological Evidence 99-49-1

MISSISSIPPI CODE
1972

ANNOTATED

VOLUME EIGHT C

TITLE 27

TAXATION AND FINANCE

Chapter 55. Gasoline and Motor Fuel Taxes 27-55-1
Chapter 57. Tax on Oils 27-57-1
Chapter 59. Liquefied Compressed Gas Tax 27-59-1
Chapter 61. Interstate Commercial Carriers Motor Fuel Tax 27-61-1
Chapter 63. Motor Vehicle Fueling Centers [Repealed]
Chapter 65. Sales Tax 27-65-1
Chapter 67. Use or Compensating Taxes 27-67-1
Chapter 68. Uniform Sales and Use Tax Administration Law 27-68-1
Chapter 69. Tobacco Tax 27-69-1
Chapter 70. Nonsettling-Manufacturer Cigarette Fee 27-70-1
Chapter 71. Alcoholic Beverage Taxes 27-71-1
Chapter 73. Tax Refunds 27-73-1
Chapter 75. Reciprocal Collection of Taxes 27-75-1
Chapter 77. Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue 27-77-1
Chapter 101. Annual Reports by Departments of Government, State-Supported Institutions and Taxing Entities 27-101-1
Chapter 103. State Budget 27-103-1
Chapter 104. State Fiscal Affairs 27-104-1
Chapter 105. Depositories 27-105-1
Chapter 106. Iran Divestment Act of 2015 27-106-1
Chapter 107. Disaster Relief 27-107-1
Chapter 109. Cruise Vessels 27-109-1
Chapter 111. Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018] 27-111-1
Chapter 113. Facilitating Business Rapid Response to State Declared Disasters Act of 2015 27-113-1

CHAPTER 55

Gasoline and Motor Fuel Taxes

Article 1. Gasoline Tax 27-55-1
Article 3. Other Motor Fuels [Repealed] 27-55-301

Article 5. Fuels Held in Storage [Repealed] 27-55-401
Article 7. Special Fuel Tax 27-55-501

ARTICLE 1.

GASOLINE TAX.

SEC.
27-55-1. Administration of article.
27-55-3. Purpose of article.
27-55-5. Definitions.
27-55-7. Application for permit; bond.
27-55-9. Permit; revocation; injunction.
27-55-11. Excise tax on gasoline and blend stock.
27-55-12. Exemption from excise taxes on gasoline, diesel fuel and compressed gas.
27-55-13. Monthly report and remittances.
27-55-15. Report from person not bonded as distributor of gasoline.
27-55-17. Repealed.
27-55-19. Gasoline taxes; exemptions.
27-55-21. Refund gasoline dealer.
27-55-23. Gasoline tax refunds; non-highway use.
27-55-25. Repealed.
27-55-27. Gasoline tax refunds; losses.
27-55-29. Administration, enforcement and penalties.
27-55-31. Repealed.
27-55-33. Transportation reports; seals on vessels, etc; unlawful for ship, boat, towboat, vessel or barge to offload any taxable petroleum product except at terminal registered with Internal Revenue Service.
27-55-35. Metering requirements.
27-55-37. Retention of records by distributors of gasoline and other persons; statute of limitations for actions by state for recovery of additional amounts.
27-55-39. Right to inspection.
27-55-41. Repealed
27-55-43. Commission to institute proceedings; sequestration.
27-55-45. Refund of taxes erroneously or illegally collected.
27-55-47. Funds placed in depositories.
27-55-49. Exchange of information with other states.
27-55-51. Repealed.
27-55-53. Evidence of product transported; unlawful for carriers or transporters to divert gasoline to a destination other than the destination on the manifest or bill of lading; inspections; notice of intent to import gasoline; penalties.
27-55-55. Repealed.
27-55-57. Stop at inspection station.
27-55-59. Wartime provisions.
27-55-61. Repealed.
27-55-63. Authority to make rules and regulations.
27-55-65. Effect of prior law.

§ 27-55-1. Administration of article.

The Department of Revenue, hereinafter called the commission or the department, is hereby vested with the sole power and authority, and is charged with the duty of administering and enforcing the terms and provisions of this article.

SOURCES: Codes, 1942, § 10076-01; Laws, 1969 Ex Sess, ch. 58, § 1; Laws, 1981, ch. 468, § 1; Laws, 2009, ch. 492, § 86, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Motor vehicle privilege taxes, see § 27-19-1 et seq.

Motor vehicle ad valorem taxes, see § 27-51-1 et seq.

Mobile home ad valorem taxes, see § 27-53-1 et seq.

Tax on oils, see § 27-57-1 et seq.

Liquefied compressed gas tax, see § 27-59-1 et seq.

Interstate commercial carriers motor fuel tax, see § 27-61-1 et seq.

Mississippi Transportation Commission to provide weight enforcement field personnel to assess and collect taxes, fees, and penalties and perform duties required by this article, see § 65-1-8.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

The legal incidence of the Mississippi gasoline tax is on the vendor rather than on the vendee. United States v. Sharp, 302 F. Supp. 668 (S.D. Miss. 1969).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 524 et seq.

§ 27-55-3. Purpose of article.

It is declared to be the purpose and intention of the legislature to impose an excise tax to provide highways, streets, and roads, on all persons engaged in the business as a distributor of gasoline in this state, computed at the rate stated herein, subject to the exemptions and refunds herein set forth; to inquire into all violations; and to impose and inflict the penalties herein provided; and especially are the chancery courts of this state authorized and empowered to require any and all persons to disclose and discover full information with reference to their dealing in and handling of gasoline as herein provided. Any and all persons making the disclosures and discoveries prayed for by any bill filed in the chancery courts of the State of Mississippi shall be, and are hereby given full and complete immunity from all fines and jail sentences imposed by this article.

SOURCES: Codes, 1942, § 10076-18; Laws, 1969 Ex Sess, ch. 58, § 18, eff from and after January 1, 1970.

§ 27-55-5. Definitions.

The words, terms and phrases as used in this article shall have the following meanings unless the context requires otherwise:

(a) "Gasoline" means:

(i) All products commonly or commercially known or sold as gasoline (excluding casinghead and absorption or natural gasoline) regardless of their classification or uses; and

(ii) Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten percent (10%) distilled (recovered) below two hundred sixty (260) degrees Fahrenheit and not less than ninety-five percent (95%) distilled (recovered) below four hundred sixty-four (464) degrees Fahrenheit.

The term "gasoline" shall include "aviation gasoline."

The term "gasoline" shall not include:

(i) Liquefied gases which would not exist as liquid at a temperature of sixty (60) degrees Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute;

(ii) Commercial solvents or naphthas or raw petroleum products or petrochemicals intermediates when used as or sold for use in production or manufacture of plastics, detergents, synthetic rubber, herbicides or other chemicals or products which are not prepared, advertised, offered for sale or sold for use or suitable for use as fuel for generating power in internal combustion engines;

(iii) Racing gasoline.

(b) "Aviation gasoline" means gasoline refined or manufactured, according to the specifications for aviation gasoline set forth in ASTM D-910, for exclusive use in reciprocating aviation engines.

(c) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(d) "Distributor of gasoline" means:

(i) Any person importing gasoline into this state;

(ii) Any person receiving, purchasing, acquiring, using, storing or selling any gasoline in this state on which the gasoline excise tax imposed by this article has not been paid;

(iii) Refiners, blenders, marine terminal operators or pipeline terminal operators; and

(iv) Any person licensed to sell gasoline in another state or jurisdiction who is authorized by that state or jurisdiction to collect the gasoline excise tax imposed by this article.

(e) "Highway" means every way or place, of whatever nature including public roads, toll roads, streets and alleys of this state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair. The confines of a highway shall include the entire width and length of the right-of-way.

(f) "Refiner" means every person who manufactures finished petroleum products from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, or alcohol.

(g) "Bonded distributor of gasoline" means any person holding a valid gasoline distributor's permit issued by the department.

(h) "For agricultural or maritime purposes" means gasoline used:

(i) In operating farm tractors or other farm equipment used exclusively in plowing, planting or harvesting farm products, or in operating boats, and no part of which is used in any motor vehicle or equipment driven or operated upon the public roads, streets or highways of this state; and

(ii) As a fuel in a farm tractor using the highways solely in hauling or transporting farm products of the soil from the farm to a gin or market where the title to such products is still in the producer, or in transporting fertilizer or feed to the farm, where the title to such products is still in the user.

(i) "For industrial purposes" means gasoline used in engines or motors of stationary or portable type for the purpose of operating machinery used for manufacturing or used for industrial purposes, and no part of which machinery is driven or operated upon the public roads, streets or highways of this state.

(j) "For domestic purposes" means gasoline used for any other purpose than agricultural, maritime, industrial or manufacturing, and no part of which is used for operating motor vehicles or motor-propelled machines of any description along the public roads, streets, alleys or highways (as defined in this article) of this state.

(k) "For nonhighway purposes" means gasoline used for any other purpose than agricultural, maritime, industrial, manufacturing or domestic purposes, and no part of which is used for operating motor vehicles or motor-propelled machines of any description along the public roads, streets, alleys or highways (as defined in this article) of this state.

(*l*) "For aviation purposes" means gasoline used for the operation of aircraft.

(m) "Refund gasoline" means gasoline used or to be used for agricultural, maritime, industrial, manufacturing, domestic or nonhighway purposes only, as these terms are defined in this article.

(n) "Commission" or "department" means the Department of Revenue, acting either directly or through its duly authorized officers, agents or employees.

(o) "United States government" means and includes all purchasing officers of the Armed Forces of the United States and the United States Property and Fiscal Officer for the State of Mississippi or any other state appointed pursuant to Section 708, Title 32, United States Code, when purchasing gasoline with federal funds for the account of and use by a component of the Armed Forces as herein defined.

(p) "Armed Forces" means and includes all components of the Armed Forces of the United States including the Army National Guard, the Army National Guard of the United States, the Air National Guard and the Air National Guard of the United States, as those terms are defined in Section 101, Title 10, United States Code, and any other reserve component of the Armed Forces of the United States enumerated in Section 261, Title 10, United States Code.

(q) "Blend stock" means ethanol, methanol or any other products blended with gasoline to produce motor fuel.

(r) "Blender" means any person other than a refiner who blends blend stock with gasoline or who sells or distributes blend stock for the purpose of being blended with gasoline.

(s) "Racing gasoline" means gasoline manufactured exclusively for use in racing and gasoline containing lead, or having an octane rating of 105 or higher that is not suitable for use on the highways.

SOURCES: Codes, 1942, § 10076-02; Laws, 1969 Ex Sess, ch. 58, § 2; Laws, 1972, ch. 492, § 1; Laws, 1984, ch 446, § 1; Laws, 1991, ch. 384, § 1; Laws, 1998, ch. 457, § 1; Laws, 2004, ch. 470, § 1; Laws, 2009, ch. 492, § 87, eff from and after July 1, 2010.

Editor's Note — Laws of 1984, ch. 446, § 6, effective July 1, 1984, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline excise tax laws prior to July 1, 1984, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the gasoline excise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1984, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1991, ch. 384, § 6, effective from and after July 1, 1991, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1991, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1991, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1991, or for the filing of reports and the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1998, ch. 457, § 7, effective March 23, 1998, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and other motor fuel and oil tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline, other motor fuel and oil tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Application of this section to the definition of "motor fuels" for the purpose of the underground storage tank act, see § 49-17-403.

Gasoline and petroleum products inspection law, see § 75-55-1 et seq.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Construction and application.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Under an earlier act Laws 1932, ch. 93 §§ 1 (c), 6 (b), somewhat differently worded, it was held that the paragraph of the statute respecting storage of gasoline is not to be read in connection with section respecting kerosene and fuel. Town of Utica v. State ex rel. Rice, 166 Miss. 565, 148 So. 635 (1933).

7. Construction and application.

Solvent used in manufacture of turpentine and kindred products which was not used in propelling motor vehicles and was not practically and commercially usable therein held not subject to excise tax under statute as a "gasoline" on ground that it was "usable in propelling motor vehicles," where to make the solvent so usable would make the cost more than double the cost of gasoline, the word "usable" meaning that which could be used and is convenient and practicable for use. Dixie Pine Prods. Co. v. Dyer, 178 Miss. 227, 172 So. 145 (1937).

Statute defining "motor vehicle" for purpose of regulating motor vehicles held not persuasive in interpretation of term "motor vehicle" as used in statute imposing motor vehicle fuel tax. State ex rel. Rice v. Louisiana Oil Corp., 174 Miss. 585, 165 So. 423 (1936).

"Tractor" generating motive power from motor fuel oil held "motor vehicle" within statute imposing tax on dealer in motor vehicle fuels to be used on highways. State ex rel. Rice v. Louisiana Oil Corp., 174 Miss. 585, 165 So. 423 (1936).

§ 27-55-7. Application for permit; bond.

Before any person shall engage in business as a distributor of gasoline in this state, he shall first make application to the commission, upon forms prescribed by the commission, for a permit to engage in said business.

If said application is approved by the commission, the applicant shall enter into a good and sufficient surety bond, written by a company qualified to write such bonds in this state. The bond shall be made payable to the State of Mississippi in a sum of not less than One Thousand Dollars ($1,000.00) nor more than Two Hundred Fifty Thousand Dollars ($250,000.00), the amount to be determined by the commission; or, in lieu thereof, the applicant may deposit with the commission a cash bond in the amount so determined. A personal bond in the amount so determined shall also be acceptable in lieu of a surety bond if the same is adequately secured by the pledge or assignment of a pledgeable or assignable bond or bonds of the State of Mississippi or the United States Government. Such bond or bonds shall be in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and not to exceed the gasoline tax estimated to become due by the said distributor of gasoline for any ninety-day period. The bond herein required shall be increased within the limits hereinabove set forth from time to time if deemed insufficient by the commission, giving to the distributor of gasoline fifteen (15) days' notice, in writing, to increase said bond, said notice to state the amount of increase demanded.

The condition of said bond shall be that the distributor of gasoline shall fully comply with all laws pertaining to distributors of gasoline and pertaining to the transportation of gasoline as regulated by this article, and that he shall pay the gasoline tax and the penalties provided. Provided, however, any person who, prior to January 1, 1970, has furnished bond to meet the requirements of any petroleum tax law administered by the commission, shall not be required to furnish an additional bond provided his existing bond is adequate, but such person shall be subject to all the other provisions of this article regulating and governing distributors of gasoline.

Provided further, that any person who purchases all of his gasoline on a tax-paid basis and from a qualified bonded distributor of gasoline for sale or distribution to retailers for resale to consumers shall not be required to make bond for said gasoline purchased, but shall be subject to all the other provisions of this article regulating and governing distributors of gasoline.

SOURCES: Codes, 1942, § 10076-03; Laws, 1969 Ex Sess, ch. 58, § 3; Laws, 1981, ch. 468, § 2, eff from and after July 1, 1981.

Cross References — Application of this section to the definition of "bonded distributor" for the purpose of the underground storage tank act, see § 49-17-403.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Collection of tax.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

An original bonded distributor may sell gasoline to a subsequent bonded distributor in the state on the assumption that a sufficient bond has been required of the subsequent distributor to protect the interests of the state. Mize v. Republic Oil Ref. Co., 199 Miss. 292, 24 So. 2d 741 (1946).

Promise, voluntarily made in bond executed for privilege of selling gasoline, to pay attorney's fees and other expenses incurred in collecting privilege tax and penalty held enforceable, although not required by statute. Treas v. Price, 167 Miss. 121, 146 So. 630 (1933).

7. Collection of tax.

Original bonded distributor in state who sold gasoline to another bonded distributor was entitled to credit for excise tax paid to the motor vehicle commissioner under Code 1942, § 10017, notwithstanding that the commissioner failed to collect the tax from the subsequent bonded distributor because of insolvency and the insufficient size of the latter distributor's bond. Mize v. Republic Oil Ref. Co., 199 Miss. 292, 24 So. 2d 741 (1946).

RESEARCH REFERENCES

Am Jur. 8B Am. Jur. Legal Forms 2d, Garages, Service Stations, and Parking Facilities, § 128:15 (bond of gasoline distributor).

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 27-55-9. Permit; revocation; injunction.

If the commission approves the application and bond it shall issue a permit authorizing said applicant to engage in business as a bonded distributor of gasoline and said permit shall not be assignable or otherwise transferable. Said permit may be revoked for any single business location or all such locations by the commission at any time upon ten (10) days' written notice, if said distributor of gasoline shall fail to pay the gasoline tax and penalties due within the time provided by law, or shall fail in any way to comply with all of the provisions of this article, but such cancellation shall not relieve said distributor of gasoline or his sureties from liability on his distributor's bond. No permit shall be issued to any applicant who is in arrears or default to this state, or any subdivision thereof, for any taxes. All gasoline distributors' permits, letters or certificates which have been heretofore issued under the provisions of the laws administered by the commission and which are valid and outstanding on January 1, 1970, shall remain in full force and effect until they are either replaced with a gasoline distributor's permit, or until they are revoked or cancelled by the commission.

Any person who shall engage in the business of a distributor of gasoline without a permit, letter or certificate having first been obtained as provided herein, or after any permit, letter or certificate granted a distributor of gasoline has been revoked, shall forfeit all right to do business as a distributor of gasoline in this state for a period of not less than one (1) year nor more than five (5) years. It shall be the duty of the commission, when it shall have knowledge that a person is engaging in business as a distributor of gasoline without a valid permit, letter or certificate, to proceed to prevent by injunction or otherwise the continuance of said business, and any judge or chancellor, now authorized to grant injunctions, shall have the power to grant an injunction enjoining the continuance of said business for not less than one (1) year nor more than five (5) years.

SOURCES: Codes, 1942, § 10076-04; Laws, 1969 Ex Sess, ch. 58, § 4; Laws, 1981, ch. 468, § 3, eff from and after July 1, 1981.

Cross References — Injunctions generally, see § 11-13-1 et seq.
Application for permit, see § 27-55-7.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Injunction.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Attorney general's agreement to sale of gasoline and payment of proceeds to sheriff by one enjoined from selling it without permit was competent evidence in mitigation of seller's conduct in violating injunction, but not justification therefor. Hanna v. State ex rel. Rice, 169 Miss. 314, 153 So. 371 (1934).

Court's cancellation, on final decree enjoining sale of gasoline without tax, of bond for accounting given by defendants on dissolution of temporary injunction, held error. State ex rel. Rice v. Terry, 167 Miss. 558, 146 So. 140 (1933).

7. Injunction.

Bill alleging defendants' sale of gasoline, notwithstanding state auditor's notice of revocation of their permit for nonpayment of excise tax, held sufficient to support decree pro confesso and writ of injunction thereon, though not alleging ten days' notice of intention to revoke license; allegation as to notice being amendable on objection, if defective. Hanna v. State ex rel. Rice, 169 Miss. 314, 153 So. 371 (1934).

Attorney general's bill of complaint, praying injunction against sale of gasoline without permit, held not defective in not alleging that state would suffer irreparable injury without injunction; injury vel non to state being immaterial. Hanna v. State ex rel. Rice, 169 Miss. 314, 153 So. 371 (1934).

Writ of injunction against sale of gasoline without permit is not entirely void because command thereof is broader than statute and prayer in bill of complaint, but remains good as to portion prohibiting acts forbidden by statute. Hanna v. State ex rel. Rice, 169 Miss. 314, 153 So. 371 (1934).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 88, 90, 91, 93, 95.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq. (proceedings relating to grant or refusal of license).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq. (proceedings relating to suspension or revocation of license).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73 (defense of exemption in action to collect license fee).

CJS. 53 C.J.S., Licenses §§ 82-99.

§ 27-55-11. Excise tax on gasoline and blend stock.

Any person in business as a distributor of gasoline or who acts as a distributor of gasoline, as defined in this article, shall pay for the privilege of engaging in such business or acting as such distributor an excise tax equal to Eighteen Cents (18¢) per gallon until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per gallon thereafter, on all gasoline and blend stock stored, sold, distributed, manufactured, refined, distilled, blended or compounded in this state or received in this state for sale, use on the highways, storage, distribution, or for any purpose.

Any person in business as a distributor of aviation gasoline, or who acts as a distributor of aviation gasoline, shall pay for the privilege of engaging in such business or acting as such distributor an excise tax equal to Six and Four-tenths Cents (6.4¢) per gallon on all aviation gasoline stored, sold, distributed, manufactured, refined, distilled, blended or compounded in this state or received in this state for sale, storage, distribution or for any purpose.

The excise taxes collected under this section shall be paid and distributed in accordance with Section 27-5-101.

The tax herein imposed and assessed shall be collected and paid to the State of Mississippi but once in respect to any gasoline. The basis for determining the tax liability shall be the correct invoiced gallons, adjusted to sixty (60) degrees Fahrenheit at the refinery or point of origin of shipment when such shipment is made by tank car or by motor carrier. The point of origin of shipment of gasoline transported into this state by pipelines shall be deemed to be that point in this state where such gasoline is withdrawn from the pipeline for storage or distribution, and adjustment to sixty (60) degrees Fahrenheit shall there be made. The basis for determining the tax liability on gasoline shipped into this state in barge cargoes and by pipeline shall be the actual number of gallons adjusted to sixty (60) degrees Fahrenheit unloaded into storage tanks or other containers in this state, such gallonage to be determined by measurement and/or gauge of storage tank or tanks or by any other method authorized by the commission. The tank or tanks into which barge cargoes of gasoline are discharged, or into which gasoline transported by pipeline is discharged, shall have correct gauge tables listing capacity, such gauge tables to be prepared by some recognized calibrating agency and to be approved by the commission.

The tax levied herein shall accrue at the time gasoline is withdrawn from a refinery in this state except when withdrawal is by pipeline, barge, ship or vessel. The refiner shall pay to the commission the tax levied herein when gasoline is sold or delivered to persons who do not hold gasoline distributor permits. The refiner shall report to the commission all sales and deliveries of gasoline to bonded distributors of gasoline. The bonded distributor of gasoline who purchases, receives or acquires gasoline from a refinery in this state shall report such gasoline and pay the tax levied herein.

Gasoline imported by common carrier shall be deemed to be received by the distributor of gasoline, and the tax levied herein shall accrue, when the car or tank truck containing such gasoline is unloaded by the carrier.

With respect to distributors or other persons who bring, ship, have transported, or have brought into this state gasoline by means other than through a common carrier, the tax accrues and the tax liability attaches on the distributor or other person for each gallon of gasoline brought into the state at the time when and at the point where such gasoline is brought into the state.

The tax levied herein shall accrue on blend stock at the time it is blended with gasoline. The blender shall pay to the commission the tax levied herein when blend stock is sold or delivered to persons who do not hold gasoline distributor permits. The blender shall report to the commission all sales and deliveries of blend stock to bonded distributors of gasoline. The bonded distributor of gasoline who purchases, receives or acquires blend stock from a blender in this state shall report blend stock and pay the tax levied herein.

SOURCES: Codes, 1942, § 10076-05; Laws, 1969 Ex Sess, ch. 58, § 5; Laws, 1972, ch. 485, § 1; Laws, 1981, ch. 464, § 27; Laws, 1984, ch. 446 § 2; Laws, 1987, ch. 322, § 6; Laws, 1991, ch. 384, § 2; Laws, 1994, ch. 557, § 18, eff from and after July 1, 1994.

Editor's Note — Laws of 1981, ch. 464, § 30, effective July 1, 1981, provides as follows:

"SECTION 30. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline excise tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the gasoline excise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1984, ch. 446, § 6, effective July 1, 1984, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline excise tax laws prior to July 1, 1984, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the gasoline excise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1984, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1991, ch. 384, § 6, effective from and after July 1, 1991, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1991, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1991, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1991, or for the filing of reports and the imposition of any penalties, forfeitures or claims for failure to comply therewith."

See Section 65-39-35 for events which must occur for reductions in certain taxes and rates to take effect.

Cross References — Apportionment by state tax commission of taxes imposed by this section, see § 27-5-101.

Ad valorem tax exemption of oil, gas, and other petroleum products refined in state, see § 27-31-19.

Definition of "blend stock", see § 27-55-5.

Exemption from taxes levied under this section for federal, state and local governments and political subdivisions, see § 27-55-12.

Right of a permittee, in computing the amount of tax due, to take a credit for all payments of taxes levied in this section, see § 27-61-11.

Requirement that certain records be maintained with respect to the taxes levied by this section, see § 27-61-12.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Construction and application.
3.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.
12. Applicability of tax to public contractors.
13. Effect on interstate commerce.
14. Enforcement of tax.

I. UNDER CURRENT LAW.

1. In general.

Federal and state excise taxes on the sale of gasoline are taxes against the producer. Gurley v. Rhoden, 288 So. 2d 868 (Miss. 1974), aff'd, 412 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

2. Construction and application.

The denial of the deduction of state and federal gasoline excise taxes in computing the gross proceeds of retail sales of gasoline for purposes of the state sales tax is not unconstitutional. Gurley v. Rhoden, 421 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

For the purpose of computing the state sales tax, federal and state excise taxes on the sale of gasoline are properly includable. Gurley v. Rhoden, 288 So. 2d 868 (Miss. 1974), aff'd, 412 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

3.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.

The tax imposed by this statute [Code 1942, § 10016] is in reality paid by the consumer as a tax for the use of public highways; initial collection from the wholesaler is only a guarantee against black market maneuvers. State ex rel. Rice v. Republic Oil Ref. Co., 202 Miss. 688, 32 So. 2d 290 (1947).

The term "correct invoiced gallons" means that the tax is imposed upon the number of gallons invoiced at the refinery or point of origin of shipment as a basis, which basis is correct only after the actual number of gallons actually delivered into the state has been determined; it is this actual number of gallons delivered, whether that number be greater or smaller than the invoiced gallons, which is subject to the tax imposed. State ex rel. Rice v. Republic Oil Ref. Co., 202 Miss. 688, 32 So. 2d 290 (1947).

The 2 percent deduction in gallonage provided for in Code 1942, § 10018, is in its ultimate effect an allowance to the retailer, who for his actual gallonage received, deducts the 2 percent which is then passed back to the wholesaler, and is not for any such use as a device to correct the original shipper's invoice. State ex rel. Rice v. Republic Oil Ref. Co., 202 Miss. 688, 32 So. 2d 290 (1947).

It was never intended by the legislature that the 2 percent deduction provided for in Code 1942, § 10018, would act as a corrective of the differential in gallonage between that invoiced and that actually unloaded in the storage tanks in the state. State ex rel. Rice v. Republic Oil Ref. Co., 202 Miss. 688, 32 So. 2d 290 (1947).

The provisions of this section [Code 1942, § 10016] pertaining to bonded distributors was enacted to enable a bonded distributor receiving gasoline for sale in the state to sell gasoline to a subsequent bonded distributor without requiring at the time of the sale the payment of the tax by the subsequent distributor to the original distributor. Mize v. Republic Oil Ref. Co., 199 Miss. 292, 24 So. 2d 741 (1946).

An original bonded distributor may sell gasoline to a subsequent bonded distributor in the state on the assumption that a sufficient bond has been required of the subsequent distributor to protect the interests of the state. Mize v. Republic Oil Ref. Co., 199 Miss. 292, 24 So. 2d 741 (1946).

Original bonded distributor in state who sold gasoline to another bonded distributor was entitled to credit for excise tax paid to the motor vehicle commissioner under this section [Code 1942, § 10016], notwithstanding that the commissioner failed to collect the tax from the subsequent bonded distributor because of insolvency and the insufficient size of the latter distributor's bond. Mize v. Republic

Oil Ref. Co., 199 Miss. 292, 24 So. 2d 741 (1946).

The effect of this statute [Code 1942, § 10016] was to amend the former enactment so as to continue the tax in force for the time and in the manner and to the amount imposed by the pre-existing statute which was brought forward in substantially the same language as originally imposed; accordingly, the absence of a saving clause could not affect liability and collection of privilege or excise taxes accruing prior to the effective date of the statute and under the former enactment as against a municipality for fuel oil purchased by it from outside the state. City of Belzoni v. State ex rel. Rice, 186 Miss. 623, 191 So. 657 (1939).

Tractors used in repair of existing roads held "used upon highways" within statute imposing tax on sale of motor vehicle fuel used on highways. State ex rel. Rice v. Louisiana Oil Corp., 174 Miss. 585, 165 So. 423 (1936).

An earlier statute, Laws, 1932 ch. 93, §§ 1, 2, 6, was construed as levying a tax on storage of gasoline but not on storage of kerosene and fuel oil, and as levying an excise gallonage tax on kerosene and fuel oil merely on those products in hands of persons engaged in business of selling or distributing them, and therefore as not levying a tax on fuel oil upon which tax was not previously paid, used by municipality for its own purposes, in electric plant and not on streets or highways, and not sold or blended. Town of Utica v. State ex rel. Rice, 166 Miss. 565, 148 So. 635 (1933).

Where manner in which filling station operator as agent of unincorporated association organized to permit members to obtain gasoline without paying privilege tax differed in no material respect from that in which operator would have handled gasoline as ordinary retail dealer, operator held liable for tax. Treas v. Price, 167 Miss. 121, 146 So. 630 (1933).

12. Applicability of tax to public contractors.

The Constitution immunizes the United States and its property from taxation by the states, but it does not forbid a tax whose legal incidence is upon a contractor doing business with the United States, even though the economic burden of the tax, by contract or otherwise, is borne by the United States. United States v. Sharp, 302 F. Supp. 668 (S.D. Miss. 1969).

Liability of dealer for motor vehicle fuel tax sold for use in tractors used in repairing highways under contract with county held not affected by fact that imposition of tax imposed additional burden on county. State ex rel. Rice v. Louisiana Oil Corp., 174 Miss. 585, 165 So. 423 (1936).

State held not estopped from collecting motor vehicle fuel tax and penalties on sale of fuel for use in tractors used in repair of highways under contract with county because contract was entered into under departmental construction of tax statute under which such fuel would be subject to lower rate of tax than that sued for as against contention that collection of higher rate of tax would constitute impairment of obligation of contract. State ex rel. Rice v. Louisiana Oil Corp., 174 Miss. 585, 165 So. 423 (1936).

13. Effect on interstate commerce.

Privilege tax on gasoline neither sold nor distributed in package in which it was shipped from sister state, but only after it had been transferred therefrom and in broken quantities, held not objectionable as burden on interstate commerce. Treas v. Price, 167 Miss. 121, 146 So. 630 (1933).

14. Enforcement of tax.

Judgment for tax collector for excise taxes on gasoline received and sold in state prior to June 1, 1932, "in full of all claims and demands of the plaintiff against the defendant, as set forth in the original and all amended declarations of this cause," but expressly excluding adjudication of claim of tax collector as to the "three percent. differential and the tax thereon," was res judicata of an action to recover excise taxes on gasoline not reported to state auditor prior to November 27, 1931, where no fraud was shown, and judgment included same period of time, same parties, same issues, was rendered by court of competent jurisdiction, and was on its face res judicata. Pan Am. Petro. Corp. v. Gully, 179 Miss. 847, 175 So. 185 (1937).

Attorney general's stipulation, subject to sheriff's approval, for sale of gasoline and payment of proceeds to sheriff by one enjoined from selling gasoline until payment of excise tax, did not justify violation of injunction, where sheriff's approval of stipulation was not shown nor any reason given for not obtaining it. Hanna v. State ex rel. Rice, 169 Miss. 314, 153 So. 371 (1934).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 524 et seq.

§ 27-55-12. Exemption from excise taxes on gasoline, diesel fuel and compressed gas.

(1) The United States government, the State of Mississippi, counties, municipalities, school districts and all other political subdivisions of the state, and volunteer fire departments chartered under the laws of the State of Mississippi as nonprofit corporations shall be exempt from excise taxes on gasoline, special fuel and compressed gas as follows:

(a) From the excise tax rate in excess of Nine Cents (9¢) per gallon of gasoline and from the excise tax rate in excess of One Cent (1¢) per gallon of aviation gasoline levied under Section 27-55-11, Mississippi Code of 1972, Five and Four-tenths Cents (5.4¢) thereof shall be exempt as provided in Section 27-55-19, Mississippi Code of 1972.

(b) From the excise tax rate in excess of Ten Cents (10¢) per gallon of special fuel levied at Eighteen Cents (18¢) per gallon under Sections 27-55-519 and 27-55-521, Four and Three-fourths Cents (4.75¢) thereof shall be exempt.

(c) From the excise tax rate in excess of One Cent (1¢) per gallon of special fuel taxed at Five and Three-fourths Cents (5.75¢) per gallon and from the excise tax rate in excess of One-half Cent (½¢) per gallon of special fuel used in aircraft levied under Section 27-55-519, Four and Three-fourths Cents (4.75¢) thereof shall be exempt.

(d) From the portion of the excise tax rate on compressed gas used as a motor fuel that exceeds the rate of tax in effect on June 30, 1987, Three Cents (3¢) thereof shall be exempt.

(2) The exemption provided in subsection (1) of this section for sales of gasoline, special fuel and compressed gas to volunteer fire departments shall apply only to sales of gasoline, special fuel and compressed gas for use in a vehicle owned by a volunteer fire department and used for department purposes.

(3) The exemption provided in subsection (1) of this section for sales of gasoline, special fuel and compressed gas also shall apply to sales of gasoline, special fuel and compressed gas to an entity described in Section 27-51-41(2)(u) for use in buses and other motor vehicles that are exempt from ad valorem taxation under Section 27-51-41(2)(u).

(4) Any person other than a bonded distributor of gasoline, bonded distributor of special fuel or bonded distributor of compressed gas who sells or delivers any gasoline, special fuel or compressed gas, subject to the exemption

set forth in this section, is required to obtain credit for such exemption from a bonded distributor of gasoline, special fuel or compressed gas.

SOURCES: Laws, 1987, ch. 527, § 2; Laws, 1999, ch. 461, § 37; Laws, 2006, ch. 467, § 1; Laws, 2010, ch. 502, § 2, eff from and after July 1, 2010.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Laws of 2006, ch. 467, § 2 effective July 1, 2006, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 55, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 55, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Exemption of federal, state and local governments and political subdivisions from portion of gasoline excise tax, see § 27-55-19.

ATTORNEY GENERAL OPINIONS

A nonprofit Mississippi corporation organized and existing for the purpose of providing public ambulance service is not a political subdivision of the state and, therefore, is not entitled to the exemptions from gasoline and motor fuel taxes provided by the statute. Oliver, April 10, 1998, A.G. Op. #98-0183.

§ 27-55-13. Monthly report and remittances.

For the purpose of determining the amount of his liability for the tax imposed by this article, each bonded distributor of gasoline shall, not later than the twentieth day of the month next following the month in which this article becomes effective, and not later than the twentieth day of each month thereafter, file with the commission a monthly report which shall include a statement of the number of gallons of gasoline or blend stock received by such distributor within this state during the preceding calendar month, and such other information as may be reasonably necessary for the proper administration of this article.

At the time of filing each monthly report with the commission, a distributor may take a credit for the number of gallons of gasoline that he purchased during the preceding calendar month from a distributor who pays the excise tax imposed by this article on such gasoline.

At the time of filing each monthly report with the commission, each distributor of gasoline shall pay to the commission the full amount of the gasoline tax due from such distributor for the preceding calendar month, less two percent (2%) to cover evaporation, shrinkage and other normal losses.

Reports and payments sent to the commission by mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be postmarked by the first working day following the due date in order to be considered timely filed.

The monthly report of the distributor of gasoline shall be prepared and filed with the commission on forms prescribed by the commission, or the distributor of gasoline may, with the approval of the commission, furnish the required information on machine-prepared schedules. Such monthly reports or schedules shall be signed by the distributor or his duly authorized agent and shall contain a declaration that the statements contained therein are true and correct and are made under the penalty of perjury.

SOURCES: Codes, 1942, § 10076-06; Laws, 1969 Ex Sess, ch. 58, § 6; Laws, 1981, ch. 468, § 4; Laws, 1991, ch. 384, § 3; Laws, 1996, ch. 306, § 1; Laws, 1998, ch. 457, § 2, eff from and after passage (approved March 23, 1998).

Editor's Note — Laws of 1991, ch. 384, § 6, effective from and after July 1, 1991, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1991, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1991, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1991, or for the filing of reports and the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1996, ch. 306, § 13, effective July 1, 1996, provides as follows:

"SECTION 13. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1998, ch. 457, § 7, effective March 23, 1998, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and other motor fuel and oil tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline, other motor fuel and oil tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Crime of perjury, see § 97-9-59.

§ 27-55-15. Report from person not bonded as distributor of gasoline.

Every person, other than a bonded distributor of gasoline, who shall purchase, or otherwise acquire gasoline within this state on which the tax has not been paid or covered by a bond of a distributor of gasoline, or otherwise exempt, shall be subject, with respect to such gasoline, to all the provisions that apply to a bonded distributor of gasoline and shall be further subject to the additional penalties hereinafter provided.

SOURCES: Codes, 1942, § 10076-07; Laws, 1969 Ex Sess, ch. 58, § 7, eff from and after January 1, 1970.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Deduction.
8. Limitation period.
9. Penalty.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Statute fixing date for payment of license taxes on distributors of petroleum products and imposing penalty for failure to timely pay taxes does not violate due-process clause or any other provision of constitution. Texas Co. v. Dyer, 179 Miss. 135, 174 So. 80 (1937), appeal dismissed, 301 U.S. 670, 57 S. Ct. 945, 81 L. Ed. 1334 (1937).

7. Deduction.

The 2 per cent deduction in gallonage is in its ultimate effect an allowance to the retailer, who for his actual gallonage received, deducts the 2 per cent which is then passed back to the wholesaler, and is not for any such use as a device to correct the original shipper's invoice. State ex rel. Rice v. Republic Oil Ref. Co., 202 Miss. 688, 32 So. 2d 290 (1947).

It was never intended by the legislature that the 2 per cent deduction provided herein would act as a corrective of the differential in gallonage between that invoiced and that actually unloaded into storage tanks in the state. State ex rel. Rice v. Republic Oil Ref. Co., 202 Miss. 688, 32 So. 2d 290 (1947).

8. Limitation period.

While § 59, ch. 264, Laws of 1946 (Code 1942, § 10013-59) might be construed as containing saving clause only in favor of state for collection of fines, penalties, damages and taxes under the repealed statute, nevertheless if it preserved right of taxpayer for credit or deduction on account of erroneous overpayment made while prior law was in effect, such right is subject to one year limitation for presenting the claim as provided by this section [Code 1942, § 10013-07]. McCullen v. Sinclair Ref. Co., 207 Miss. 71, 41 So. 2d 382 (1949).

Claim for allowance of credit for overpayments of gasoline and oil taxes between May 1, 1942 and March 31, 1946, was barred by the one-year limitation provision of § 7, ch. 264, Laws of 1946 (see Code 1942, § 10013-07), which chapter repealed the prior law on the subject, where such a claim was not presented within such one-year period or within one year after the effective date of the repealing statute. McCullen v. Sinclair Ref. Co., 207 Miss. 71, 41 So. 2d 382 (1949).

Claim for allowance of credit for overpayments of gasoline and oil taxes between May 1, 1942 and March 31, 1946, when prior law was in effect, was barred by the one-year limitation provision of this section [Code 1942, § 10013-07], where such claim was not presented within such limitation period or within one year after the effective date of chapters 237 and 264, Laws of 1946, which repealed the prior law. McCullen v. Sinclair Ref. Co., 207 Miss. 71, 41 So. 2d 382 (1949).

9. Penalty.

Where employee of distributor of gasoline, kersoene, and other products went to post office on 15th day of May, 1936, for purpose of registering remittance covering license tax imposed on distributor, but finding registry window closed, did not mail remittance until May 16, as result of which remittance did not reach motor vehicle commissioner until Monday, May 18, distributor held liable for twenty per cent penalty imposed by statute for failure to pay tax on 15th. Texas Co. v. Dyer, 179 Miss. 135, 174 So. 80 (1937), appeal dismissed, 301 U.S. 670, 57 S. Ct. 945, 81 L. Ed. 1334 (1937).

Alleged fact that if gasoline tax remittance had been timely mailed, week-end bank clearance delay would have prevented state from receiving money until Monday, when remittance was actually received, and that therefore state was not delayed in use of money, did not preclude imposition of penalty. Texas Co. v. Dyer, 179 Miss. 135, 174 So. 80 (1937), appeal dismissed, 301 U.S. 670, 57 S. Ct. 945, 81 L. Ed. 1334 (1937).

§ 27-55-17. Repealed.

Repealed by Laws of 1982, ch. 438, § 18, effective from and after July 1, 1982.

[Codes, 1942, § 10076-08; Laws, 1969 Ex Sess, ch. 58, § 8]

Editor's Note — Former § 27-55-17 provided for the comptroller to determine the amount of gasoline received.

§ 27-55-19. Gasoline taxes; exemptions.

There shall not be included in the measure of the tax levied hereunder any gasoline:

(a) Sold or delivered by a bonded distributor of gasoline to a second bonded distributor of gasoline within this state, but nothing in this exclusion shall exempt the second bonded distributor of gasoline from paying the tax, unless the second bonded distributor of gasoline sells or delivers said gasoline to a third bonded distributor of gasoline in which event the third bonded distributor of gasoline shall be liable for the tax.

(b) Sold to the United States government for use of the Armed Forces only, and delivered in quantities of not less than four thousand (4,000) gallons. Any exemption provided in this paragraph (b) may be deducted without the prior approval of the department, provided that satisfactory proof of such exemption shall be furnished to the department. However, such exemption may be disallowed by the department if the distributor fails to furnish satisfactory proof of such exemption to the department.

(c) Exported to a destination beyond the borders of this state by a bonded distributor of gasoline when the tax on such gasoline has been paid or on which the tax liability imposed by this article has accrued against such bonded distributor. Any exemption provided in this paragraph (c) may be deducted without the prior approval of the department, provided that satisfactory proof of such exemption shall be furnished to the department; however, such exemption may be disallowed by the department if the distributor fails to furnish satisfactory proof of such exemption to the department within ninety (90) days from the sale or delivery of the gasoline.

(d) Exported by any person to a destination beyond the borders of this state in quantities of not less than three thousand (3,000) gallons by ship, vessel, barge, railroad tank car, or pipeline, or by tank truck if such tank truck is operated by a common or contract carrier.

(e) Imported by, or sold to, any refiner or processor in this state for the purpose of being refined or further processed.

(f) Sold to any manufacturer for blending or compounding to the end that it becomes a component part of any manufactured product, or where used as a processing agent in the treatment of raw material in manufacturing a product which does not fall within the meaning of the term "gasoline" as defined in this article.

(g) Sold or delivered to be used for test purposes at any regularly established testing laboratory in this state.

Except as provided in paragraphs (b) and (c) above, evidence of exempt transactions provided in this section and subsections thereof, satisfactory to the department, shall be submitted by the distributor desiring an allowance of said exemptions to the department with the payment of the excise tax on the gasoline on which the exemption is claimed. If the department decides that the distributor is entitled to the exemption and allowance claimed, it shall notify said distributor in writing of such allowance. The distributor shall then be allowed to deduct from the payments made in his next monthly report, after said allowance, the amount of tax which he paid on this exempted gasoline which amount shall be arrived at by taking the amount of exempted gasoline minus two percent (2%) allowed for evaporation, shrinkage and other losses on gasoline, and multiplying the remainder by the amount of excise tax per gallon. In cases where the amount of such tax cannot be absorbed on the estimated tax liability of the person making such payments during the next six (6) months, the amount shall be refunded to the taxpayer. Such amount shall be certified to the State Auditor of Public Accounts by the department. The said Auditor is hereby authorized to make such investigation and audit of the claim as he finds necessary. If he finds that the department is correct in its determination, the Auditor may issue his warrant to the State Treasurer in favor of the taxpayer for the amount of tax erroneously paid, such refunds to be made from current gasoline, or special fuel tax collections.

Except as otherwise provided in this section, in order to claim exemptions provided for under this article, the distributor of gasoline must file claims therefor within three (3) years from the date of sale or delivery; otherwise, claims for such exemptions shall be disallowed.

In case gasoline and special fuel on which the tax has been previously paid are accidentally mixed, the distributor of gasoline or other person owning such mixture may ship the mixture out of the State of Mississippi, or to a Mississippi refinery, and may claim credit for the gasoline and/or special fuel tax on the gasoline and special fuel so mixed. The distributor of gasoline or other person may also ship the mixture to a barge or pipeline storage terminal within the State of Mississippi to be brought up to gasoline specifications, or lowered to special fuel specifications, as the case might be, under the supervision of a representative of the department. It shall be the duty of the distributor of gasoline or other person to whom the mixed product belongs to notify the department immediately after knowledge that the mixture has occurred.

In case the distributor of gasoline or other person elects to ship the mixture to a barge or pipeline terminal for storage within this state, the department shall supervise the unloading of the mixture.

In order to perfect a claim for credit for the tax on the gasoline and special fuel constituting any such mixture, the distributor of gasoline or other person making the claim shall do so in writing and shall furnish proof satisfactory to the department that the mixture was either shipped out of this state or to a refinery or other approved place of storage within this state. The department shall notify the claimant, in writing, whether or not his claim is approved, and, if approved, the claimant may deduct the amount of the claim from his next tax report. No such claim shall be allowed unless filed within three (3) years after the date of such accidental mixture. Bonded distributors of gasoline having no gasoline tax liability with the department may assign such tax credit to a bonded distributor of gasoline having such tax liability.

No tax liability shall accrue against the operator of a refinery when shipments of gasoline are made from such refinery, either by common carrier or by tank trucks owned and operated by the operator of said refinery, to a tax-exempt account within this state or to another refinery within this state.

Provided, however, that when gasoline is withdrawn from the storage tank of a refiner or processor on which the tax is paid on such gasoline and it or any part thereof cannot be delivered to a purchaser, said refiner or processor may deduct the tax on all or that portion of such gasoline not delivered to a purchaser from its next gasoline distributor's tax report; provided that such refiner or processor submits with such tax report: (1) a written report setting forth the reasons why such delivery could not be made, and (2) proof or evidence satisfactory to the department that the tax in question had theretofore been paid to the department, and (3) proof or evidence satisfactory to the department that the nondelivered gasoline was actually returned to the refinery or processor from which it was taken for the purpose of delivering it to a purchaser; and provided further, that immediately upon ascertainment by the refiner or processor that said gasoline cannot be delivered, he or it shall immediately notify the department of this fact and before moving his or its truck or other means of transporting said gasoline from the intended point of delivery; and should the department desire to inspect said truck, or other means of conveyance, such refiner or processor shall arrange for such inspection at the point or at such other point that may be designated by the department.

The United States government, the State of Mississippi, counties, municipalities, school districts and all other political subdivisions of the state, and entities described in Section 27-55-12(3) shall be exempt from Five and Four-tenths Cents (5.4¢) of the portion of the gasoline excise tax rate which exceeds Nine Cents (9¢) per gallon. Any exemption provided in this paragraph may be deducted without the prior approval of the department.

SOURCES: Codes, 1942, § 10076-09; Laws, 1969 Ex Sess, ch. 58, § 9; Laws, 1971, ch. 503, § 1; Laws, 1981, ch. 468, § 5; Laws, 1985, ch. 451, § 1; Laws, 1987, ch. 527, § 3; Laws, 1989, ch. 518, § 1; Laws, 1996, ch. 306, § 2; Laws, 1999, ch. 461, § 38; Laws, 2010, ch. 502, § 3, eff from and after July 1, 2010.

Editor's Note — Section 7-7-2 provides that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1985, ch. 451, § 2, effective from and after July 1, 1985, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline excise tax laws prior to July 1, 1985, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the gasoline excise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1985, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 518, § 9, effective from and after July 1, 1989, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1996, ch. 306, § 13, effective July 1, 1996, provides as follows:

"SECTION 13. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Exemption from taxes generally, see § 27-31-1 et seq.

Ad valorem tax exemption of oil, gas, and other petroleum products refined in state, see § 27-31-19.

Exemption of federal, state and local governments and political subdivisions from portion of excise taxes on gasoline, diesel fuel and compressed gas, see § 27-55-12.

Exemption from taxes levied under this section for federal, state and local governments and political subdivisions, see § 27-55-12.

Refunds of gasoline tax paid on gasoline used for nonhighway purposes, see § 27-55-23.

Refund of gasoline tax or tax credit in case of loss of gasoline in bulk quantities while in transit or in storage, see § 27-55-27.

Refund of gasoline taxes or penalties erroneously or illegally collected, see § 27-55-45.

Applicability of this section to refund claims based on losses of lubricating oils, see § 27-57-19.

Applicability of this section to refund of erroneously or illegally collected taxes on lubricating oils, see § 27-57-33.

Application of this section to refunds of excess privilege tax payments by certain users of compressed gas, see § 27-59-33.

Application of this section to refunds of unexpired portion of privilege tax payments by certain users of compressed gas, see § 27-59-35.

Applicability of this section to refund of erroneously or illegally collected taxes on liquefied compressed gas, see § 27-59-47.

Applicability of this section to the refund of erroneously or illegally collected user taxes on natural gas, compressed gas or locomotive fuels, see § 27-59-319.

Applicability of this section to refund of illegal or erroneously collected taxes on interstate commercial carriers motor fuels, see § 27-61-11.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Construction and application.

I. UNDER CURRENT LAW.

1. In general.

Action by gasoline distributor to recover refund of gasoline tax is subject to one year statute of limitations under § 27-55-19, not to 3 year statute of limitations under §§ 27-55-45, 27-73-1. Triangle Refineries, Inc. v. Mabus, 467 So. 2d 650 (Miss. 1985).

2.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

The Constitution immunizes the United States and its property from taxation by the states, but it does not forbid a tax whose legal incidence is upon a contractor doing business with the United States, even though the economic burden of the tax, by contract or otherwise, is borne by the United States. United States v. Sharp, 302 F. Supp. 668 (S.D. Miss. 1969).

Decision in Panhandle Oil Co. v. Mississippi, 277 U.S. 218, 72 L. Ed. 857, 48 S. Ct. 451, 56 A.L.R. 583 (revg 147 M 663, 112 So 584) that a tax (imposed by previous enactment, Laws of 1926, ch 119) measured by the quantity sold may not be imposed upon the privilege of selling gasoline to the federal government for use of its coast guard fleet or a veterans' hospital which the United States is empowered by the constitution to maintain and operate was overruled in Alabama v. King & Boozer, 314 U.S. 1, 9, 86 L. Ed. 3, 6, 62 S. Ct. 43, 140 A.L.R. 615, in so far as it held that a tax, the economic burden of which falls upon the federal government, may not constitutionally be imposed by a state. Panhandle Oil Co. v. Mississippi ex rel. Knox, 277 U.S. 218, 48 S. Ct. 451, 72 L. Ed. 857, 56 A.L.R. 583 (1928), overruled, Alabama v. King & Boozer, 314 U.S. 1, 62 S. Ct. 43, 86 L. Ed. 3 (1941).

7. Construction and application.

The Federal Land Bank is an agency or instrumentality of the federal government within the meaning of this statute [Code 1942, § 10049]. Craig v. Federal Land Bank, 189 Miss. 309, 194 So. 589 (1940).

A form prepared by the attorney general of the state, approved by the Federal Farm Loan Board, as a branch of the federal government having supervision of federal land banks, which was acted on by the state auditor allowing an exemption to the Federal Land Bank of New Orleans, constituted a substantial compliance with the statute; and the requirement that a form should be signed by an officer, agent or other employee of the federal government was complied with where signed by the agents and employees of the Federal Land Bank for the reason that the Federal Land Bank is an agent of the federal government as such agent could not sign the form except through one of its own agents and employees. Craig v. Federal Land Bank, 189 Miss. 309, 194 So. 589 (1940).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 527.

CJS. 53 C.J.S., Licenses §§ 54, 56, 57.

§ 27-55-21. Refund gasoline dealer.

Any person desiring to sell refund gasoline shall file an application with the commission for a refund gasoline dealer's permit.

A refund gasoline dealer shall not deliver refund gasoline to any tank which is not properly marked as required by this article. Any distributor of gasoline, dealer, or other seller of gasoline, shall not have in his possession, or under his control, a refund certificate book, other than his own, whether the same be blank, or filled in and signed, or signed in blank. No refund gasoline shall be placed in the fuel tank of a motor vehicle subject to use on the public roads and highways of this state.

No person shall be allowed any refund on gasoline purchased from any person not having a permit as required by this section.

SOURCES: Codes, 1942, § 10076-10; Laws, 1969 Ex Sess, ch. 58, § 10; Laws, 1982, ch. 438, § 1, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 438, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-55-23. Gasoline tax refunds; non-highway use.

Any person who shall purchase and use gasoline other than aviation gasoline for agricultural, maritime, industrial, or domestic purposes, as defined in this article, which is not used in operating motor vehicles upon the highways of this state, shall be entitled to a refund of all but Six and Four-tenths Cents (6.4¢) per gallon of the tax actually paid on gasoline which is used for agricultural, maritime, industrial, domestic, or nonhighway purposes, as herein defined, provided that no such refund shall be payable unless the provisions of this article are complied with. Provided, however, no refund shall be allowed to any person who may purchase, sell or use gasoline, either on or off the highway, in performing contracts for construction, reconstruction, maintenance or repair, where such contracts are entered into with the State of Mississippi or with any department, agency or institution of the State of Mississippi, or with any political subdivision of the State of Mississippi, or with any department, agency, or institution of such political subdivision. Also, provided that no refund of tax paid on gasoline used on the highways of this state in motor vehicles owned or operated by the federal government, State of Mississippi, or any department or political subdivision of either will be allowed.

Any person who shall purchase and use gasoline other than aviation gasoline for aviation purposes, as defined in this article, shall be entitled to a refund of all but Six and Four-tenths Cents (6.4¢) per gallon of the tax actually paid on gasoline thus used.

The granting of a refund privilege to any claimant under the provisions of this article is declared to be a matter of grace rather than a matter of right, and in all cases arising under this section the burden shall be on the claimant to make proof sufficient to convince the department of the claimant's compliance with the provisions of this article; otherwise, the refund claim shall be denied or the claimant's permit cancelled by the department, as the case may be.

Before any person shall be entitled to claim refund of any tax paid on gasoline under the provisions of this section, he shall file an information blank for a refund permit with the department. Such information blank shall be made on forms furnished by the department and shall give a detailed description of the equipment and such other information as the department may require with respect to the equipment or machinery in which refund gasoline is to be used. If such gasoline is not to be used in equipment or machinery, the purpose for which such gasoline is to be used shall be stated. The information blank and supplements thereto shall be signed by the person desiring to use refund gasoline or his authorized agent and filed under the penalty of perjury.

If additional or replacement equipment or machinery is acquired, or if the status of the claimant otherwise changes after the original information blank is filed, supplemental information reflecting these changes shall be filed at the time of filing the next refund claim. The supplemental information blank shall contain the same information with respect to the changes as is required on the original information blank.

Upon approval of the information blank, the department shall assign a file number to be used by the refund user. Provided, also, that such refund user will be issued a refund certificate book to be used when purchasing refund gasoline. Each refund certificate shall carry the file number of the refund user and, upon each purchase of refund gasoline, a certificate shall be filled in and signed on the calendar day of delivery, by either the dealer or the refund user or their authorized agents, but in no case may one (1) individual sign such certificate as both the dealer and the user. Each certificate, however, must be signed by both the claimant and dealer, or their authorized agents, before a refund of tax can be allowed on the certificate. Such refund certificate book shall not be transferable or assignable and shall be kept in the possession of the refund user or in his control at all times. Upon receipt of the information blank properly completed, the department shall forward to such refund user the file number and certificate book. Should the department refuse to issue a file number and refund certificate book, or refuse to pay any refund alleged to be due, the applicant or user may, within sixty (60) days from the date of the notice of the refusal by the department, appeal to the board of review of the Department of Revenue as hereinafter provided.

It shall be the duty of the consumer of gasoline for which refund application is to be made, including any distributor of gasoline using his own gasoline for a refund purpose, to have storage facilities available for delivery of refund gasoline. Such storage facilities shall be plainly marked "refund gasoline" in lettering of contrasting color and not less than four (4) inches in height. Where refund gasoline is delivered directly into the fuel tank of equipment belonging to or used by the refund user, such equipment shall be plainly marked "refund gasoline" in lettering of contrasting color as near to the fuel tank as possible. Such lettering shall not be less than four (4) inches in height. It shall also be the duty of the distributor of gasoline delivering gasoline into the tanks to dye the refund gasoline a distinctive mahogany color at the time of delivery. However, in no case shall dye be added to gasoline to be used in aircraft.

The department is authorized to waive the requirement that refund gasoline be dyed in any case where damage to equipment or machinery would result from the addition of such dye, or where addition of dye would otherwise render gasoline unfit for its intended use. It shall be the obligation of the user to obtain the aforementioned waiver from the department.

Any person desiring a refund on any gasoline purchased shall make claim to the department, on forms provided by the department, within three (3) years from the date the gasoline was purchased. No refund shall be allowed on any gasoline which shall not have been already used or consumed by the purchaser thereof before the filing of the claim; provided, however, when a claim is filed and there is an unused part of any purchase to be carried forward to the next claim, the dating of this carry-over shall take the same date of the first purchase entered on the next claim. No person shall file more than one (1) claim during any one (1) month. The claim shall be personally signed by the purchaser or his duly authorized agent. The claimant shall in the claim, state that the refund claim has not and will not be assigned. The original and duplicate of the certificate shall be retained by the claimant, at the time of purchase. The original certificate with vendor's invoices shall be attached to the refund claim, and the duplicate shall remain in the certificate book of the claimant and shall be subject to inspection by the department at all reasonable hours. The claimant shall preserve the duplicate certificates for three (3) years from date of purchase. The claim shall be in the name of the purchaser and shall show the purchaser's refund file number. Supporting invoices shall state that dye has been added to refund gasoline or that the requirement that dye be added has been waived by the department. The claim shall be certified under the penalty of perjury.

Any person who shall file a claim for refund under the provisions of this article shall show on each refund claim filed: the names and addresses of the person or persons from whom the claimant customarily purchases motor fuel for use in propelling motor vehicles owned or operated by the claimant on the highways of this state. Until the provisions of this paragraph are complied with, the refund claim shall not be allowed.

Upon receipt of the claim, the department shall determine the amount of refund due to the claimant and the amount shall be refunded to the claimant as provided in Section 27-55-19. If for any reason the department should determine that an erroneous claim has been paid, it may deduct such erroneous payment from any legal claim subsequently filed by the claimant to whom erroneous payment was made.

If the department determines that any refund claim shall not be paid, it shall notify the claimant, in writing, at the earliest date possible after such determination stating the reason or reasons why such claim is disallowed.

A refund claimant may, within sixty (60) days after receipt of notice of the disallowance of his claim, appeal to the board of review of the Department of Revenue as hereinafter provided.

SOURCES: Codes, 1942, § 10076-11; Laws, 1969 Ex Sess, ch. 58, § 11; Laws, 1971, ch. 503, § 2; Laws, 1981, ch. 468, § 6; Laws, 1984, ch. 446, § 3 1987, ch. 322, § 7; Laws, 1989, ch. 518, § 2; Laws, 2009, ch. 492, § 88, eff from and after July 1, 2010.

Editor's Note — Laws of 1984, ch. 446, § 6, effective July 1, 1984, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline excise tax laws prior to July 1, 1984, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the gasoline excise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1984, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 518, § 9, effective from and after July 1, 1989, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Use of portion of tax on aviation fuels and oils for which a refund has been made pursuant to this section for support and development of aeronautics, see § 27-5-101.

Refunds for loss or destruction of gasoline, see § 27-55-27.

§ 27-55-25. Repealed.

Repealed by Laws of 1984, ch. 446, § 5, effective from and after July 1, 1984.

[Codes, 1942, § 10076-12; Laws, 1969 Ex Sess, ch. 58, § 12; 1971, ch. 503, § 3; 1981, ch. 468, § 7; 1982, ch. 438, § 2]

Editor's Note — Former § 27-55-25 related to gasoline tax refunds to aviation gasoline dealers.

§ 27-55-27. Gasoline tax refunds; losses.

When gasoline is lost or destroyed in quantities of seven hundred fifty (750) gallons or more through explosion, fire, collision, storage tank wreckage, wreckage of loading or unloading facilities, such as pumps and lines, or acts of Providence while in storage in this state or while being transported in this state, the owner of such gasoline shall be entitled to tax credit or refund of the tax paid thereon.

The department shall be notified by the owner of gasoline lost or destroyed within five (5) days after the loss or destruction is discovered. The department shall make such investigation of the facts and circumstances surrounding such loss or destruction as may be reasonably necessary for the effective administration of this article.

The claim shall be made in the name of the owner of gasoline lost or destroyed and shall be signed by the owner or his authorized agent and filed within three (3) years after the date of loss. All such claims must be accompanied by proof satisfactory to the department that the gasoline for which credit is claimed was destroyed by or through one of the means set forth in the first paragraph of this section, and in all cases where gasoline alleged to have been destroyed was covered by insurance, the department shall not approve such claims unless and until the insurer has acknowledged and actually paid the loss.

Upon receipt of the claim, the department shall determine the amount of refund or tax credit due the claimant and in the case of refund, the amount shall be refunded to the claimant as provided in Section 27-55-19.

If the department determines that any refund claim shall not be paid, it shall notify the claimant, stating the reason why such claim is disallowed. A claimant may, within sixty (60) days from the date of the written notice of the disallowance of his claims, appeal to the board of review as hereinafter provided in this article.

SOURCES: Codes, 1942, § 10076-13; Laws, 1969 Ex Sess, ch. 58, § 13; Laws, 1971, ch. 503, § 4; Laws, 1981, ch. 468, § 8; Laws, 1989, ch. 518, § 3; Laws, 2009, ch. 492, § 89, eff from and after July 1, 2010.

Editor's Note — Laws of 1989, ch. 518, § 9, effective from and after July 1, 1989, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Oil tax refunds for losses, see § 27-57-19.

Tax refunds for liquefied compressed gas losses, see § 27-59-35.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Proof of Facts 3d, Act of God, § 1 et seq.

§ 27-55-29. Administration, enforcement and penalties.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this article, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in said Sales

Tax Law, except that in cases of conflict, then the provisions of this article shall control.

SOURCES: Codes, 1942, § 10076-14; Laws, 1969 Ex Sess, ch. 58, § 14; Laws, 1981, ch. 468, § 9, eff from and after July 1, 1981.

Cross References — State sales tax generally, see § 27-65-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 536, 537.

§ 27-55-31. Repealed.

Repealed by Laws of 1982, ch. 438, § 18, effective from and after July 1, 1982.

[Codes, 1942, § 10076-15; Laws, 1969 Ex Sess, ch. 58, § 15]

Editor's Note — Former § 27-55-31 related to general penalties.

§ 27-55-33. Transportation reports; seals on vessels, etc; unlawful for ship, boat, towboat, vessel or barge to offload any taxable petroleum product except at terminal registered with Internal Revenue Service.

Every common or contract carrier transporting gasoline by whatever means, from a point outside this state to any point in this state, shall report, in writing, all deliveries of gasoline to points within this state to the commission on forms prescribed by the commission or, with the approval of the commission, furnish the required information on machine-prepared schedules, and such other information as may be necessary for the proper administration of this article.

The reports required in this section shall be for information purposes only and the commission may, in its discretion, waive the filing of any of these reports not necessary for proper administration of this article. The reports required in this section shall be signed and contain a declaration that the statements contained therein are true and are made under penalty of perjury. Such reports required in this section shall be filed with the commission on or before the 20th day of each month following the month in which the transaction occurred.

Any such person failing or refusing to file said report on or before the date required by law, or who shall omit any shipment of gasoline from said report, shall be subject to a penalty which shall be a percentage of the tax imposed by law on the total amount of the taxable products involved as follows:

(a) Not more than ten percent (10%) for the first failure, refusal or omission; and

(b) Not more than twenty percent (20%) for the second and any subsequent failure, refusal or omission.

The commission may waive the penalty imposed in the preceding paragraph upon good cause shown.

All ships, boats, towboats, vessels or barges delivering taxable petroleum products into this state shall have all inlets and outlets sealed with different numbered seals, the number of which shall be recorded on the invoices, manifests, bills of lading, or other records accompanying the shipment. Any captain of a ship, boat, barge, towboat or vessel found in violation of this provision shall be guilty of a misdemeanor and fined not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00) for the first offense, and not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00) for each offense thereafter.

It shall be unlawful for any ship, boat, towboat, vessel or barge delivering taxable petroleum products into this state to unload such taxable petroleum products in this state unless the delivery is to a terminal approved by and registered with the Internal Revenue Service. Any captain of a ship, boat, barge, towboat or vessel who violates this provision shall be fined One Thousand Dollars ($1,000.00) per offense and the entire amount of the state excise tax upon such taxable petroleum product shall be deemed due and payable, plus a penalty of twenty-five percent (25%) of the amount of such tax, and any authorized representative of the commission or the enforcement officers of the Mississippi Department of Transportation shall have the right to seize or impound such ship, boat, towboat, vessel or barge until such excise tax and penalty have been paid.

SOURCES: Codes, 1942, § 10076-16; Laws, 1969 Ex Sess, ch. 58, § 16; Laws, 1989, ch. 397, § 1; Laws, 2004, ch. 525, § 1, eff from and after July 1, 2004.

Editor's Note — Laws of 1989, ch. 397, § 4, effective July 1, 1989, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55 and 57, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and the imposition of any such penalties, forfeitures or claims for failure to comply therewith."

Laws of 2004, ch. 525, § 4, effective July 1, 2004, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 55, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-55-35. Metering requirements.

A gallonage measuring meter shall be installed on each pipeline used for the withdrawal of gasoline subject to excise taxes provided in this article from the storage tank of any refinery, pipeline terminal, water terminal, or any terminal that does not have stationary bulk storage tanks at such terminal within the State of Mississippi, and no gasoline shall be withdrawn except through said gallonage measuring meters. No bypass installation shall be constructed around the meters. Said meters shall be installed and maintained as required by the comptroller, and shall be sealed by him or his agents. In case of a breakdown or mechanical impairment of any such meters, the owner or operator of the terminal or refinery shall give notice to the comptroller of such breakdown or mechanical impairment within twenty-four (24) hours after such breakdown or impairment becomes known to the owner or operator, and such meters shall be repaired and reinstalled or replaced within thirty (30) days from the time such breakdown or mechanical impairment becomes so known. The comptroller, or his agent, shall maintain a close watch over the receipt and withdrawal of gasoline products during such period of breakdown or mechanical impairment. Provided, however, this section shall not apply to withdrawal lines used exclusively for withdrawal of liquefied petroleum gases.

The owner or operator of each refinery or terminal in the State of Mississippi shall have installed and maintained, according to the requirements of the comptroller, at said refinery or terminal a prover tank for the purpose of proving the accuracy of measurement of the said meters. The comptroller, or his agent, shall have the use of the prover tank at any reasonable time of the day for the purpose of checking the accuracy of measurement of said meters. He is further given the authority to verify the accuracy of any prover tank or tanks.

The comptroller shall have the authority to use services of any recognized calibrating agency for the purpose of determining whether or not the prover tank or tank system provided for herein is properly constructed and installed.

It shall be unlawful for any person to break any seal placed upon any meter installed under the provisions of this section, except in the presence of an agent of the comptroller or in the presence of some person whom the comptroller has specifically authorized to be present and act for him. It shall also be unlawful for any person to withdraw any taxable gasoline from storage tanks as covered by this article except through the meters prescribed herein. The violation of any of the provisions of this section shall constitute a misdemeanor and, upon conviction, such person shall be subject to fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or to imprisonment for not more than sixty (60) days in jail, or to both such fine and imprisonment. Notwithstanding anything to the contrary contained in this section, the comptroller may, in his discretion, waive the penalty for breaking in an emergency any seal placed upon any meter installed under the provisions of this article, provided the person breaking the same notifies the comptroller, in writing, that he has done so within twenty-four (24) hours after the time such seal is broken.

SOURCES: Codes, 1942, § 10076-17; Laws, 1969 Ex Sess, ch. 58, § 17, eff from and after January 1, 1970.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-55-37. Retention of records by distributors of gasoline and other persons; statute of limitations for actions by state for recovery of additional amounts.

Each distributor of gasoline shall maintain and keep for a period of three (3) years a record of all gasoline purchased, received, procured, manufactured, refined, compounded, used, sold, stored or delivered within this state by the distributor, together with invoices, bills of lading and other pertinent records and papers as may be reasonably required by the commission.

It shall be the duty of every person purchasing gasoline from a distributor of gasoline or other person for the purpose of sale or distribution to maintain and keep for a period of three (3) years, a record of all gasoline received, together with delivery tickets, invoices, bills of lading and such other records as the commission may require.

All sales made by a distributor of gasoline, other than retail sales from a service station, shall be evidenced in writing, signed by the seller, or his agents, shall bear the date of purchases, name and address of the purchaser and the seller, and shall show the kind and quantity of the product purchased. Sales tickets and invoices made to cash shall not be considered as complying with the terms of this article.

If, in the normal conduct of the business of a distributor of gasoline, the records of such distributor are maintained and kept at an office outside this state, it shall be a sufficient compliance with this section if the records shall be made available for audit and examination by the commission at such office located outside Mississippi. If a distributor of gasoline fails or refuses to permit the commission or any of its employees to check and audit his records during the usual business hours of the day, the commission shall have authority to subpoena said records and have them brought to the office of the commission within ten (10) days after the subpoena is served on the distributor of gasoline.

All actions by the state for the recovery of additional amounts claimed as tax due under this article must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided, that in the case of a fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time. However, when an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified thereof either by certified mail or personal delivery of a notice by an agent of the commissioner, within the thirty-six-month examination period provided herein, the determination of the correct tax liability may be made by the commission after the expiration of said thirty-six-month examination period, provided that said determination shall be made with reasonable promptness and diligence.

SOURCES: Codes, 1942, § 10076-19; Laws, 1969 Ex Sess, ch. 58, § 19; Laws, 1981, ch. 468, § 10; Laws, 2006, ch. 344, § 1, eff from and after July 1, 2006.

§ 27-55-39. Right to inspection.

The commissioner and his agents and employees shall have full access, ingress, and egress at all reasonable hours to and from any place or building where gasoline may be received, stored, transported, sold, offered or exposed for sale, manufactured, refined, distilled, compounded, or blended. The commissioner and his agents and employees shall have the right to open and inspect any case, package, or other container, any tank, pump, tank car or storage tank in which gasoline is kept and enter upon any barge, vessel, or other vehicle transporting gasoline and, with instruments conforming to the weights and measures adopted by the United States Bureau of Standards, check any measuring device or volume of weight of the contents of any such container.

SOURCES: Codes, 1942, § 10076-20; Laws, 1969 Ex Sess, ch. 58, § 20; Laws, 1986, ch. 395, § 1, eff from and after July 1, 1986.

Cross References — General duties of constables, see § 19-19-5.
Duties of sheriff, generally, see § 19-25-67.
Weights and measures, see § 75-27-1 et seq.
Gasoline and petroleum products inspection law, see § 75-55-1 et seq.

Federal Aspects — United States Bureau of Standards (now the National Institute of Standards and Technology) generally, see 15 USCS § 271 et seq.

§ 27-55-41. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

[Codes, 1942, § 10076-21; Laws, 1969 Ex Sess, ch. 58, § 21; Laws, 1981, ch. 468, § 11, eff from and after July 1, 1981.]

Editor's Note — Former § 27-55-41 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-55-43. Commission to institute proceedings; sequestration.

The commission is hereby authorized and empowered to institute legal proceedings for any and all violations of this article, to recover taxes, damages or penalties due under this article. All taxes and damages recovered in any proceedings by the commission shall be paid over and disposed of as any and all other gasoline taxes are required to be. Any chancellor or judge authorized to grant remedial writs shall grant writs of sequestration for the impounding of gasoline on which the excise tax or penalties is owed. Before any writ of sequestration shall be issued under this section, the complainant shall make an affidavit showing that he had good cause to believe, and does believe, that there is an excise tax or penalty owed the State of Mississippi on gasoline sought to be sequestered and that unless said gasoline is sequestered and impounded, said gasoline will be removed, concealed or disposed of. Upon such affidavit being presented to any chancellor or judge authorized to grant remedial writs, said chancellor or judge shall order said writ to be issued upon the filing of a bill of complaint for the collection of the excise tax on said gasoline. The writ of sequestration shall then be issued and the property dealt with in the manner now provided by law for other writs of sequestration. Where the State of Mississippi is the complainant, no bond shall be required of said state for the issuance of said writ of sequestration.

The State of Mississippi shall have a lien upon all of the property of every distributor or person acting as a distributor of gasoline without a permit, used in the operation of his business as such distributor for the excise taxes levied by this article and due or to become due the State of Mississippi. Such liens or encumbrances of whatever character shall be paramount to private liens and to the rights of any holder of the legal title in or to any pumps, tanks, inventories of gasoline and other petroleum products, motor vehicles, or other personal property used in the operation of said business.

The commission shall have the right, when taxes due the State of Mississippi are delinquent under this article, or where any person acting as a distributor of gasoline without a permit receives gasoline in this state without paying the tax thereon, to cause a writ of summons and seizure to issue, returnable to the court having jurisdiction thereof, in like manner as such writs are authorized to be issued by Chapter 7 of Title 85, Mississippi Code of 1972. Said writ shall be directed to the proper officer or to the commission commanding the officer or commission, as the case may be, to seize the property upon which a lien exists as hereinabove provided. After the issuance of said writ, such actions and proceedings shall be had on said writ as presently provided for the enforcement of purchase money security interests by the statutes of this state. The commission shall have the right to stop and hold any moving or movable equipment subject to seizure pursuant to the provisions of this paragraph pending the issuance of process.

It is expressly provided that the remedies set out in the foregoing paragraphs shall be cumulative and that no action taken by the commission shall be construed to be an election on the part of this state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this article.

SOURCES: Codes, 1942, § 10076-22, Laws, 1969 Ex Sess, ch. 58, § 22; Laws, 1981, ch. 468, § 12, eff from and after July 1, 1981.

Cross References — Tax suits by attorney general, see § 7-5-55.
Sequestration proceedings generally, see § 11-29-1 et seq.
Action to recover tax, penalty and interest, see § 27-35-5.
Commission as meaning Department of Revenue, see § 27-55-5.
Purchase money security interests, see §§ 75-9-103, 75-9-317, 75-9-324.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

In suit for motor fuel oil tax and penalty, bill held sufficient to state cause of action. State ex rel. Rice v. Louisiana Oil Corp., 174 Miss. 585, 165 So. 423 (1936).

§ 27-55-45. Refund of taxes erroneously or illegally collected.

In the event that any taxes or penalties imposed by this article have been erroneously or illegally collected from a distributor of gasoline or other person, the commission may, upon approval by the commission, permit such distributor or other person to take credit against a subsequent tax report for the amount of the erroneous overpayment or the amount thereof may be refunded to the distributor or other person in the same manner as provided in Section 27-55-19. Provided, however, in cases where the approved claim exceeds Twenty-five Thousand Dollars ($25,000.00), the claimant may not take credit on his monthly reports for more than Twenty-five Thousand Dollars ($25,000.00) per month until such approved amount is depleted.

No refunds shall be made under the provisions of this section unless a written claim is filed setting forth the circumstances by reason of which such refund should be allowed. Said claim shall be in such form as the commission shall prescribe, and, except as otherwise provided in this section, shall be filed with the commission within three (3) years from the date of payment of the taxes erroneously or illegally collected. Nothing in this article shall be construed to prohibit a refund or credit for tax paid on gasoline not subject to tax or which is exempt from tax, provided there has not been a willful disregard of the provisions of this article and further provided that the claim therefor is filed within three (3) years.

SOURCES: Codes, 1942, § 10076-23; Laws, 1969 Ex Sess, ch. 58, § 23; Laws, 1981, ch. 468, § 13; Laws, 2007, ch. 535, § 1, eff from and after passage (approved Apr. 18, 2007.)

Editor's Note — The former third paragraph was repealed by its own terms, effective October 1, 2007.

Cross References — Refund of taxes generally, see § 27-73-1 et seq.

JUDICIAL DECISIONS

1. In general.

Action by gasoline distributor to recover refund of gasoline tax is subject to one year statute of limitations under § 27-55-19, not to 3 year statute of limitations under §§ 27-55-45, 27-73-1. Triangle Refineries, Inc. v. Mabus, 467 So. 2d 650 (Miss. 1985).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 609.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 383 (complaint, petition, or declaration against corporation to recover sums erroneously refunded as overpayment of excise taxes); Form 411 (claim for refund of excise tax).

CJS. 84 C.J.S., Taxation § 708 et seq.

§ 27-55-47. Funds placed in depositories.

All funds collected by the State Tax Commission under the provisions of this article, or under the provisions of any other law, which may now or in the future be collected by the commission, are hereby designated as public funds of the State of Mississippi and shall be by it deposited in accordance with Section 27-3-57.

The amount received on gasoline as defined in this article shall be paid and apportioned as provided in Section 27-5-101.

SOURCES: Codes, 1942, § 10076-24; Laws, 1969 Ex Sess, ch. 58, § 24; Laws, 1979, ch. 417, § 3; Laws, 1981, ch. 468, § 14; Laws, 1987, ch. 322, § 8, eff from and after July 1, 1987 (Governor's veto overridden by Legislature on March 12, 1987).

Editor's Note — Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — State Tax Commission as meaning the Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

Apportionment of excise taxes on gasoline and petroleum products, see § 27-5-101.

Refunds, see § 27-55-45.

State depositories, see § 27-105-1 et seq.

§ 27-55-49. Exchange of information with other states.

The commission may provide any department or agency of any state or the United States responsible for the enforcement of gasoline taxes any information it may have relative to the manufacture, receipt, sale, use, transportation and/or shipment of gasoline by any person. The commission may provide any department or agency of any state or the United States that is responsible for the enforcement of gasoline taxes any demographic information it may have relative to distributors of gasoline. The commission may place such information in a national database or clearinghouse in order to facilitate the exchange of such information.

SOURCES: Codes, 1942, § 10076-25; Laws, 1969 Ex Sess, ch. 58, § 25; Laws, 2001, ch. 390, § 1, eff from and after passage (approved Mar. 11, 2001.)

§ 27-55-51. Repealed.

Repealed by Laws, 1989, ch. 397, § 3, eff from and after July 1, 1989. [Codes, 1942, § 10076-26; Laws, 1969 Ex Sess, ch. 58, § 26]

Editor's Note — Former § 27-55-51 related to license and bond of motor fuel carriers.

Laws of 1989, ch. 397, § 4, effective July 1, 1989, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55 and 57, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and the imposition of any such penalties, forfeitures or claims for failure to comply therewith."

§ 27-55-53. Evidence of product transported; unlawful for carriers or transporters to divert gasoline to a destination other than the destination on the manifest or bill of lading; inspections; notice of intent to import gasoline; penalties.

Every person hauling, transporting or conveying more than fifty (50) gallons of gasoline over the highways, streets, alleys or waters of this state, or into this state over any highway, street, alley or water route, shall, during the entire time he is so engaged, have in his possession a bill of sale, bills of lading, invoices or other written evidence, each of which shall be serially numbered, showing the kind and amount of gasoline being transported, the name and address of the person from whom said gasoline was received, and the name and address of the person to whom delivery is to be made. The vehicle or boat conveying said gasoline shall have clearly printed on it the name and address of the person transporting such gasoline on both sides of the vehicle, or boat, in well-balanced letters of not less than two (2) inches in height on a contrasting background.

Any person transporting gasoline without a shipping document containing the information set forth in this section or who diverts a shipment of gasoline to a destination other than the destination listed on such shipping document or who alters a shipping document without notice to the commission shall be liable for a fine of One Thousand Dollars ($1,000.00) per offense and the entire amount of the state excise tax upon such gasoline shall be deemed due and payable, plus a penalty of twenty-five percent (25%) of the amount of such tax. Any authorized representative of the commission or the enforcement officers of the Mississippi Department of Transportation shall have the right to seize or impound such vehicle or boat until the excise tax and penalty have been paid. Notice to the commission shall consist of contacting the National Diversion Registry, reporting the diversion and obtaining a registration number.

The commission, its employees or agents, including the enforcement officers of the Mississippi Department of Transportation, or any sheriff, deputy sheriff, constable or police officer of this state is hereby authorized to inspect any vehicle or boat transporting gasoline over the highways, streets, alleys or waters of this state, to examine the contents of any such vehicle or boat, to take a sample of each grade of gasoline contained in said vehicle or boat provided no sample shall exceed one (1) gallon, and to inspect the bills of lading, invoices or other records pertaining to the gasoline being transported in such vehicle or boat.

Any person other than a common or contract carrier bringing gasoline into this state in quantities of more than fifty (50) gallons shall give notice to the commission of his intent to import such gasoline. The commission is authorized to promulgate rules setting forth the manner in which such notice is to be given. However, if information on gasoline imported into this state can be accurately secured from other sources by the commission, it may waive the requirements of such notice.

If any person, other than a common or contract carrier, shall transport gasoline over the highways of this state by motor vehicle without having given the notice required by this section, or if a copy of such notice is not carried in such motor vehicle as required by this section, the entire amount of the state excise tax upon such gasoline being transported shall be deemed due and payable, plus a penalty of twenty-five percent (25%) of the amount of such tax, and any authorized representative of the commission or the enforcement officers of the Mississippi Department of Transportation shall have the right to seize or impound the motor vehicle in which such gasoline is being transported until such excise tax together with the penalty thereon has been paid. Provided, however, that said penalty shall not apply when the driver of the truck stops at the first weighing station in the line of travel and secures the signature of the officer on duty on the import notice.

SOURCES: Codes, 1942, § 10076-27; Laws, 1969 Ex Sess, ch. 58, § 27; Laws, 1995, ch. 364, § 1; Laws, 2004, ch. 525, § 2, eff from and after July 1, 2004.

Editor's Note — Laws of 1995, ch. 364, § 7, effective July 1, 1995, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 63 [Repealed], Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the aforesaid laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2004, ch. 525, § 4, effective July 1, 2004, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 55, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Stops at inspection stations, see § 27-55-57.

§ 27-55-55. Repealed.

Repealed by Laws of 1996, ch. 306, § 12, effective from and after July 1, 1996.

[Codes, 1942, § 10076-28; Laws, 1969 Ex Sess, ch. 58, § 28; 1982, ch. 438, § 3]

Editor's Note — Former § 27-55-55 was entitled: Gauging capacity of tank trucks.

Laws of 1982, ch. 438, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1996, ch. 306, § 13, effective July 1, 1996, provides as follows:

"SECTION 13. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-55-57. Stop at inspection station.

Every person who shall haul, transport, or convey more than fifty (50) gallons of gasoline into this state over any highway, street, or public road thereof upon which the comptroller has established an inspection station as provided in Section 27-5-73, Mississippi Code of 1972, shall stop at such station and shall submit the vehicle transporting such gasoline and the contents thereof to the inspection of the representative of the comptroller on duty at such station and shall also make available for inspection by the representative a copy of the bill of sale, invoice or other written record required by this article. If the tax on such gasoline has not been paid, and such gasoline is not for delivery to a bonded Mississippi distributor, or is not being transported in interstate commerce, then the operator of such vehicle shall forthwith pay the tax on such gasoline to the comptroller's representative at such station. This provision shall not apply to a common or contract carrier.

SOURCES: Codes, 1942, § 10076-29; Laws, 1969 Ex Sess, ch. 58, § 29, eff from and after January 1, 1970.

Cross References — Gasoline and petroleum products inspection law, see § 75-55-1 et seq.

Liquefied petroleum gas inspection law, see § 75-57-1 et seq.

§ 27-55-59. Wartime provisions.

The comptroller is hereby authorized and empowered, with the approval of the governor and the attorney general, to alter or modify the requirements of all existing state regulations and laws governing gasoline inspection and gasoline grading should it become impossible for gasoline distributors and dealers to comply therewith by reason of regulations or directives of the United States government or any of its departments or agencies, promulgated or issued as necessary to the war effort, and in order to insure the best grades of gasoline possible to civilian users and to facilitate motor vehicle traffic during any war in which the United States is now or may hereafter be engaged.

Any modifications or alterations of such requirements shall be issued in writing by the comptroller, with the written approval of the governor and the attorney general of the State of Mississippi, only upon receipt of official government directives, in conflict with existing statutes, and such official government directives shall be preserved and recorded in the office of the comptroller. Provided, however, that no adjustment shall be made which cannot be justified by proper government directives.

The enforcement of the provisions of all laws or parts of laws which are now or may become impossible to comply with by reason of such federal regulations or directives shall be suspended for such time as the impossibility of compliance therewith continues.

The power hereby conferred shall lapse and terminate at the end of six (6) months following cessation of hostilities.

SOURCES: Codes, 1942, § 10076-30; Laws, 1969 Ex Sess, ch. 58, § 30, eff from and after January 1, 1970.

§ 27-55-61. Repealed.

Repealed by Laws 1981, ch. 468, § 74, eff from and after July 1, 1981. [Codes, 1942, § 10076-33; Laws, 1969 Ex Sess, ch. 58, § 33]

Editor's Note — Former § 27-55-61 related to deposit of funds paid to comptroller.

§ 27-55-63. Authority to make rules and regulations.

The comptroller is hereby given power and authority to make all rules and regulations, not inconsistent with the provisions of this article, with reference to all petroleum excise tax provisions and exemptions governing the making of reports and contents of same and doing any and all other duties pertaining to the making of reports and payment of taxes, and such other matters as will, in the judgment of the comptroller, contribute to a more efficient administration of all the petroleum excise tax provisions of this article. Such rules and regulations, when made, shall have the same binding force and effect as if incorporated in this article.

SOURCES: Codes, 1942, § 10076-34; Laws, 1969 Ex Sess, ch. 58, § 34, eff from and after January 1, 1970.

§ 27-55-65. Effect of prior law.

This article shall not release or relinquish any liability or penalty incurred or right accrued under the laws of this state as they existed before the January 1, 1970, and such laws shall be considered as remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of any such liability, penalty or right. Such laws shall govern the reporting and payment of taxes on gasoline received, sold, distributed or used by bonded distributors of gasoline or other persons before January 1, 1970. Any and all matters, orders, hearings, and proceedings pending before the comptroller or before any court under provisions of such prior laws shall continue with the same effect as though such prior laws were not amended or repealed.

SOURCES: Codes, 1942, § 10076-31; Laws, 1969 Ex Sess, ch. 58, § 31, eff from and after January 1, 1970.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.
1.-5. [Reserved for future use.]
II. UNDER FORMER LAW.
6. In general.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Effect of repealing statute is to abrogate repealed statute as completely as if it had never been passed, and statute modifying previous statute has same effect as though statute had all the while previously existed in same language as that contained in modified statute, unless repealing or modifying statute contains saving clause. McCullen v. Sinclair Ref. Co., 207 Miss. 71, 41 So. 2d 382 (1949).

While this section might be construed as containing saving clause only in favor of state for collection of fines, penalties, damages and taxes under the repealed statute, nevertheless if it preserved right of taxpayer for credit or deduction on account of erroneous overpayment under Code 1942, § 10018, such right is subject to one year limitation for presenting the claim as provided by § 7, ch. 264, Laws of 1946 (Code 1942, § 10013-07). McCullen v. Sinclair Ref. Co., 207 Miss. 71, 41 So. 2d 382 (1949).

Statute imposing penalty on distributor of gasoline and kerosene for failure to pay license tax on date fixed held not repealed by subsequent statute, where subsequent statute expressly retained laws for purpose of collecting penalties and reenacted without change duties and penalties in reference to payment of taxes. Texas Co. v. Dyer, 179 Miss. 135, 174 So. 80 (1937), appeal dismissed, 301 U.S. 670, 57 S. Ct. 945, 81 L. Ed. 1334 (1937).

Article 3.

Other Motor Fuels
[Repealed].

Sec.
27-55-301 through 27-55-309. Repealed.
27-55-311. Repealed.
27-55-313 and 27-55-315. Repealed.
27-55-317. Repealed.
27-55-319. Repealed.
27-55-321. Repealed.
27-55-323. Repealed.
27-55-325. Repealed.
27-55-327 through 27-55-331. Repealed.
27-55-333. Repealed.
27-55-335 through 27-55-347. Repealed.
27-55-349. Repealed.
27-55-351. Repealed.
27-55-353. Repealed.
27-55-355. Repealed.
27-55-357. Repealed.
27-55-359 and 27-55-361. Repealed.

Editor's Note — Laws of 1999, ch. 461, § 47, provided for the repeal of the remaining sections of this article, pertaining to the taxation of other motor fuels. For present similar provisions, see § 27-55-501 et seq.

§§ 27-55-301 through 27-55-309. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

§ 27-55-301. [Codes, 1942, § 10077-01; Laws, 1969 Ex Sess, ch. 54, § 1; Laws 1981, ch. 468, § 15, eff from and after July 1, 1981]

§ 27-55-303. [Codes, 1942, § 10077-02; Laws, 1969 Ex Sess, ch. 54, § 2; Laws 1973, ch. 429, § 1; Laws 1998, ch. 457, § 3, eff from and after passage (approved March 23, 1998)]

§ 27-55-305. [Codes, 1942, § 10077-03; Laws, 1969 Ex Sess, ch. 54, § 3, eff from and after January 1, 1970]

§ 27-55-307. [Codes, 1942, § 10077-04; Laws, 1969 Ex Sess, ch. 54, § 4; Laws 1981, ch. 468, § 16, eff from and after July 1, 1981]

§ 27-55-309. [Codes, 1942, § 10077-05; Laws, 1969 Ex Sess, ch. 54, § 5; Laws 1981, ch. 468, § 17, eff from and after July 1, 1981]

Editor's Note — Former § 27-55-301 related to the administration of Article 3. For present provisions, see Article 7 of this chapter.

Former § 27-55-303 related to definitions. For present provisions, see § 27-55-505.

Former § 27-55-305 related to requirement for permits. For present provisions, see § 27-55-507.

Former § 27-55-307 related to application for permit; bond. For present provisions, see § 27-55-507.

Former § 27-55-309 related to revocation of permit; injunction. For present provisions, see § 27-55-509.

Cross References — Special Fuel Tax, see § 27-55-501 et seq.

§ 27-55-311. Repealed.

Repealed by Laws of 1982, ch. 438, § 19, effective from and after July 1, 1982.

[Codes, 1942, § 10077-06; Laws, 1969 Ex Sess, ch. 54, § 6]

Editor's Note — Former § 27-55-311 related to retail dealers permit required of a retail dealer.

§§ 27-55-313 and 27-55-315. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

§ 27-55-313. [Codes, 1942, § 10077-07; Laws, 1969 Ex Sess, ch. 54, § 7; Laws 1981, ch. 468, § 18; Laws 1982, ch. 438, § 4; Laws 1987, ch. 322, § 9; Laws 1994, ch. 557, § 19; Laws 1996, ch. 306, § 3, eff from and after July 1, 1996]

§ 27-55-315. [Codes, 1942, § 10077-08; Laws, 1969 Ex Sess, ch. 54, § 8, eff from and after January 1, 1970]

Editor's Note — Former § 27-55-313 related to levy of tax. For present provisions, see §§ 27-55-519 and 27-55-521.

Former § 27-55-315 related to tax credit provision.

§ 27-55-317. Repealed.

Repealed by Laws of 1982, ch. 438, § 19, effective from and after July 1, 1982.

[Codes, 1942, § 10077-09; Laws, 1969 Ex Sess, ch. 54, § 9]

Editor's Note — Former § 27-55-317 was related to records and reports required of retail dealers.

§ 27-55-319. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

[Codes, 1942, § 10077-10; Laws, 1969 Ex Sess, ch. 54, § 10; Laws 1981, ch. 468, § 19; Laws 1987, ch. 322, § 10, eff from and after July 1, 1987 (Governor's veto overridden by Legislature on March 12, 1987) ; Laws 1996, ch. 306, § 4; Laws 1998, ch. 457, § 4, eff from and after passage (approved March 23, 1998)]

Editor's Note — Former § 27-55-319 related to monthly report and remittance. For present provisions, see § 27-55-523.

§ 27-55-321. Repealed.

Repealed by Laws of 1981, ch. 468, § 74, effective from and after July 1, 1981.

[Codes, 1942, § 10077-11; Laws, 1969 Ex Sess, ch. 54, § 11]

Editor's Note — Former § 27-55-321 related to record of distributors and retail dealers.

§ 27-55-323. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

[Codes, 1942, § 10077-12; Laws, 1969 Ex Sess, ch. 54, § 12, eff from and after January 1, 1970]

Editor's Note — Former § 27-55-323 related to power of motor vehicle comptroller to cancel permits.

§ 27-55-325. Repealed.

Repealed by Laws of 1982, ch. 438, § 19, effective from and after July 1, 1982.

[Codes, 1942, § 10077-13; Laws, 1969 Ex Sess, ch. 54, § 13]

Editor's Note — Former § 27-55-325 provided for the comptroller to determine the amount of other motor fuel sold or used.

§§ 27-55-327 through 27-55-331. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

§ 27-55-327. [Codes, 1942, § 10077-14; Laws, 1969 Ex Sess, ch. 54, § 14, eff from and after January 1, 1970]

§ 27-55-329. [Codes, 1942, § 10077-15; Laws, 1969 Ex Sess, ch. 54, § 15; Laws 1971, ch. 497, § 1; Laws 1981, ch. 468, § 20; Laws 1989, ch. 518, § 4, eff from and after July 1, 1989]

§ 27-55-331. [Codes, 1942, § 10077-16; Laws, 1969 Ex Sess, ch. 54, § 16; Laws 1981, ch. 468, § 21, eff from and after July 1, 1981]

Editor's Note — Former § 27-55-327 related to refund; tax-paid fuel transported to another state or nation for sale or use. For present provisions, see § 27-55-535.

Former § 27-55-329 related to refund; losses. For present provisions, see § 27-55-535.

Former § 27-55-331 related to administration and enforcement. For present provisions, see § 27-55-537.

§ 27-55-333. Repealed.

Repealed by Laws of 1982, ch. 438, § 19, effective from and after July 1, 1982.

[Codes, 1942, § 10077-17; Laws, 1969 Ex Sess, ch. 54, § 17]

Editor's Note — Former § 27-55-333 related to general penalties.

§§ 27-55-335 through 27-55-347. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

§ 27-55-335. [Codes, 1942, § 10077-18; Laws, 1969 Ex Sess, ch. 54, § 18; Laws 1981, ch. 468, § 22, eff from and after July 1, 1981]

§ 27-55-337. [Codes, 1942, § 10077-19; Laws, 1969 Ex Sess, ch. 54, § 19; Laws 1986, ch. 395, § 2, eff from and after July 1, 1986]

§ 27-55-339. [Codes, 1942, § 10077-20; Laws, 1969 Ex Sess, ch. 54, § 20; Laws 1981, ch. 468, § 23, eff from and after July 1, 1981]

§ 27-55-341. [Codes, 1942, § 10077-21; Laws, 1969 Ex Sess, ch. 54, § 21; Laws 1981, ch. 468, § 24, eff from and after July 1, 1981]

§ 27-55-343. [Codes, 1942, § 10077-22; Laws, 1969 Ex Sess, ch. 54, § 22; Laws 1981, ch. 468, § 25, eff from and after July 1, 1981]

§ 27-55-345. [Codes, 1942, § 10077-23; Laws, 1969 Ex Sess, ch. 54, § 23; Laws 1979, ch. 417, § 4; Laws 1981, ch. 468, § 26; Laws 1984, ch. 478, § 20, eff from and after July 1, 1984]

§ 27-55-347. [Codes, 1942, § 10077-24; Laws, 1969 Ex Sess, ch. 54, § 24, eff from and after January 1, 1970]

Editor's Note — Former § 27-55-335 related to retention of records by distributors of other motor fuel and other persons; statute of limitations for recovery by state of additional amounts claimed. For present provisions, see § 27-55-545.

Former § 27-55-337 related to right to inspection. For present provisions, see § 27-55-547.

Former § 27-55-339 related to appeal from orders or acts of the commission.

Former § 27-55-341 related to commission to institute proceedings; sequestration; lien; seizure. For present provisions, see § 27-55-551.

Former § 27-55-343 related to refund of taxes erroneously or illegally collected. For present provisions, see § 27-55-553.

Former § 27-55-345 related to funds placed in depositories. For present provisions, see § 27-55-555.

Former § 27-55-347 related to exchange of information with other states. For present provisions, see § 27-55-557.

§ 27-55-349. Repealed.

Repealed by Laws of 1989, ch. 397, § 3, effective from and after July 1, 1989.

[Codes, 1942, § 10077-25; Laws, 1969 Ex Sess, ch. 54, § 25]

Editor's Note — Former § 27-55-349 related to license and bonds of motor fuel carriers.

Laws of 1989, ch. 397, § 4, effective July 1, 1989, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55 and 57, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and the imposition of any such penalties, forfeitures or claims for failure to comply therewith."

§ 27-55-351. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

[Codes, 1942, § 10077-26; Laws, 1969 Ex Sess, ch. 54, § 26, eff from and after January 1, 1970]

Editor's Note — Former § 27-55-351 related to evidence of product transported and inspections.

§ 27-55-353. Repealed.

Repealed by Laws of 1982, ch. 438, § 19, effective from and after July 1, 1982.

[Codes, 1942, § 10077-27; Laws, 1969 Ex Sess, ch. 54, § 27]

Editor's Note — Former § 27-55-353 related to gauging capacity of tank trucks.

§ 27-55-355. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

[Codes, 1942, § 10077-30; Laws, 1969 Ex Sess, ch. 54, § 30; Laws 1987, ch. 322, § 11, eff from and after July 1, 1987 (Governor's veto overridden by Legislature on March 12, 1987)]

Editor's Note — Former § 27-55-355 related to apportionment of proceeds of tax.

§ 27-55-357. Repealed.

Repealed by Laws of 1981, ch. 468, § 74, effective from and after July 1, 1981.

[Codes, 1942, § 10077-31; Laws, 1969 Ex Sess, ch. 54, § 31]

Editor's Note — Former § 27-55-357 related to deposit of funds paid to comptroller.

§§ 27-55-359 and 27-55-361. Repealed.

Repealed by Laws of 1999, ch. 461, § 47, effective from and after July 1, 1999.

§ 27-55-359. [Codes, 1942, § 10077-32; Laws, 1969 Ex Sess, ch. 54, § 32, eff from and after January 1, 1970]

§ 27-55-361. [Codes, 1942, § 10077-28; Laws, 1969 Ex Sess, ch. 54, § 28, eff from and after January 1, 1970]

Editor's Note — Former § 27-55-359 related to authority to make rules and regulations. For present provisions, see § 27-55-563.

Former § 27-55-361 related to effect of prior law. For present provisions, see § 27-55-565.

ARTICLE 5.

FUELS HELD IN STORAGE
[REPEALED].

SEC.
27-55-401. Repealed.

§ 27-55-401. Repealed.

Repealed by Laws of 1999, ch. 461, § 48, effective from and after July 1, 1999.

[Laws, 1987, ch. 322, § 12, eff from and after July 1, 1987 (Governor's veto overridden by Legislature on March 12, 1987)]

Editor's Note — Former § 27-55-401 related to tax increases applicable to fuels held in storage: reporting requirements. For present provisions, see § 27-55-567.

ARTICLE 7.

SPECIAL FUEL TAX.

SEC.

27-55-501. Administration of article.
27-55-503. Purpose of article.
27-55-505. Definitions.
27-55-507. Distributor permit; application; bond.
27-55-509. Distributor permit; penalties for operating without.
27-55-511. Distributor permit; revocation.
27-55-513. Adoption of rules and regulations for issuance of permits.
27-55-515. Marine diesel fuel or kerosene permit.
27-55-517. Regulation of the sale of dyed diesel fuel.
27-55-519. Excise tax on special fuel.
27-55-521. Levy of excise tax on special fuel not otherwise taxed under Section 27-55-519.
27-55-523. Monthly report and remittance.
27-55-525. Person not bounded as distributor of special fuel subject to provisions that apply to bonded distributors.
27-55-527. Special fuel taxes; exemptions and allowances.
27-55-529. Repealed
27-55-531. Regulation of dyed diesel fuel and kerosene to be used for nonhighway purposes.
27-55-533. Credit for accidental mixture of gasoline and special fuel and accidental mixture of dyed and undyed special fuel.
27-55-535. Special fuel tax refunds; losses.
27-55-537. Administration, enforcement and penalties.
27-55-539. Use of dyed diesel fuel in motor vehicle.
27-55-541. Transportation reports.
27-55-543. Metering requirements.
27-55-545. Retention of records by distributors of special fuel and other persons; statute of limitations for actions by state for recovery of additional amounts.
27-55-547. Right to inspection.
27-55-549. Repealed.
27-55-551. Commission to institute proceedings; sequestration; lien; seizure.
27-55-553. Refund of taxes erroneously or illegally collected.
27-55-555. Funds placed in depositories.
27-55-557. Exchange of information with other states.
27-55-559. Evidence of product transported; unlawful for carriers or transporters to divert special fuel shipments to a destination other than the destination on the manifest or bill of lading; notice of intent to import special fuel; penalties.

27-55-561. Apportionment of tax.
27-55-563. Authority to make rules and regulations.
27-55-565. Effect of prior law.
27-55-567. Tax on undyed diesel fuel held in storage.
27-55-569. Unlawful purchase of untaxed fuel for use in highway construction equipment; penalties.

§ 27-55-501. Administration of article.

(1) This article may be cited as the "Mississippi Special Fuel Tax Law."

(2) The Department of Revenue is hereby vested with the sole power and authority, and is charged with the duty of administering and enforcing the terms and provisions of this article.

SOURCES: Laws, 1999, ch. 461, § 1; Laws, 2009, ch. 492, § 90, eff from and after July 1, 2010.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Gasoline taxes, see § 27-55-1 et seq.

Taxes on oils, see § 27-57-1 et seq.

Liquefied compressed gas taxes, see § 27-59-1 et seq.

Interstate commercial carriers motor fuel tax, see § 27-61-1 et seq.

Application of this article to any person liable for the environmental protection fee on motor fuels, see § 49-17-407.

§ 27-55-503. Purpose of article.

It is declared to be the purpose and intention of the Legislature to impose an excise tax to provide highways, streets and roads on all persons engaged in business as distributors of special fuel in this state, computed at the rates stated in this article, subject to the exemptions and refunds herein enumerated; to inquire into all violations; and to impose and inflict the penalties herein provided; and especially are the chancery courts of this state authorized and empowered to require any and all persons to disclose and discover full information with reference to their dealing in and handling of special fuel as herein provided. Any and all persons making the disclosures and discoveries prayed for by any bill filed in the chancery courts of the State of Mississippi shall be, and are, hereby given full and complete immunity from all fines and jail sentences imposed by this article.

SOURCES: Laws, 1999, ch. 461, § 2, eff from and after July 1, 1999.

§ 27-55-505. Definitions.

The words, terms and phrases as used in this article shall have the following meanings unless the context requires otherwise:

(a) "Special fuel" means kerosene, diesel fuel, fuel oils, and any petroleum fuel or any other product other than gasoline or compressed gas which is usable as fuel in an internal combustion engine, and any combustible liquid other than gasoline or compressed gas used or capable of being used as a fuel in aircraft. The term "special fuel" shall not include racing gasoline as defined in Section 27-55-5.

(b) "Bunker oil" means a residual product obtained in the refining of crude petroleum intended for use for the generation of heat in a firebox or furnace when its flash point, as determined by use of the Pensky-Martens tester, shall not be less than one hundred fifty (150) degrees Fahrenheit and when its viscosity at one hundred (100) degrees Fahrenheit shall not be less than one hundred fifty (150) seconds when determined by use of the Saybolt Universal Tubes.

(c) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(d) "Distributor of special fuel" means:

(i) Any person importing special fuel into this state;

(ii) Any person who shall receive, purchase, acquire, use, store or sell any special fuel in this state on which the excise tax hereinafter imposed by this article has not been paid;

(iii) Any person exporting special fuel;

(iv) Any person engaged in the distribution of special fuel by tank car or tank truck or both; however, no person may qualify as a distributor of special fuel for the sole purpose of using special fuel, as defined in this article, as a fuel to propel a vehicle or vehicles owned or operated by him on the highways of this state; and

(v) All persons meeting the definition of "refiners," "processors," "terminal operator," "blenders" and any person licensed to sell motor fuel in another state or jurisdiction who is authorized by that state or jurisdiction to collect the special fuel excise tax imposed by this article.

(e) "Bonded distributor of special fuel" means any person holding a valid distributor of special fuel permit issued by the Department of Revenue.

(f) "Refiner" or "processor" means every person who shall receive, produce, manufacture, refine, distill, blend or compound special fuel in this state, when such person shall engage in any business incident to or necessary for refining or processing petroleum products in this state; provided further, that such refiner or processor must have at least two (2) ten-thousand-gallon or larger tanks for product storage, and the blending or mixing process produces a finished product that has entirely different physical and chemical properties from the original products.

(g) "For nonhighway purposes" means special fuel which is not used for operating motor vehicles or motor-propelled machines of any description along the public roads, streets, alleys or highways of this state as defined in this article.

(h) "Highway" means every way or place of whatever nature, including public roads, toll roads, streets and alleys of this state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair. The confines of a highway shall include the entire width and length of the right-of-way.

(i) "Commission" or "department" means the Department of Revenue of the State of Mississippi, acting either directly or through its duly authorized officers, agents or employees.

(j) "Terminal" means a tank farm within the State of Mississippi with storage capacity for the receipt of a full barge delivery or common carrier pipeline delivery of taxable petroleum products when such products are to be distributed within the state.

(k) "Marine dealer" means any person selling special fuel from marine or dockside storage facilities when such special fuel is for use in boats, vessels, barges or ships.

(*l*) "United States government" means and includes all purchasing officers of the Armed Forces of the United States and the United States Property and Fiscal Officer for the State of Mississippi or any other state appointed pursuant to Section 708, Title 32, United States Code, when purchasing special fuel with federal funds for the account of and use by a component of the Armed Forces as herein defined.

(m) "Armed Forces" means and includes all components of the Armed Forces of the United States including the Army National Guard, the Army National Guard of the United States, the Air National Guard and the Air

National Guard of the United States, as those terms are defined in Section 101, Title 10, United States Code, and any other reserve component of the Armed Forces of the United States enumerated in Section 261, Title 10, United States Code.

(n) "Motor vehicle" means every vehicle designed, constructed for or used on the highways of this state which is self-propelled, except a farm tractor using the highways solely in hauling or transporting farm products of the soil from the farm to a gin or market when the title to such products is still in the producer, or a farm tractor used in transporting fertilizer or food to a farm when the title to such products is still in the user.

(o) "Consumer" means, in addition to its ordinary meaning, a person who purchases undyed diesel fuel to be used for nonhighway purposes and who does not resell such undyed diesel fuel.

(p) "Retail dealer" means any person who operates a retail station.

(q) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service requirements.

(r) "Dyed kerosene" means kerosene that is dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service requirements.

(s) "Undyed diesel fuel" means diesel fuel that does not meet the dyeing requirements prescribed by United States Environmental Protection Agency or Internal Revenue Service Regulations.

(t) "Fuel oil" means a general classification for one of the petroleum fractions produced in conventional distillation operations. For the purposes of this article, "fuel oil" is No. 1, No. 2 and No. 4 fuel oils and No. 1, No. 2 and No. 4 diesel fuels.

(u) "Blender" shall mean any person who blends or compounds any product to produce special fuel.

(v) "Terminal operator" means any person who owns, operates or otherwise controls a terminal.

SOURCES: Laws, 1999, ch. 461, § 3; Laws, 2004, ch. 470, § 2; Laws, 2009, ch. 492, § 91, eff from and after July 1, 2010.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 27-55-507. Distributor permit; application; bond.

Before any person shall engage in business as a distributor of special fuel in this state, he shall first make application to the commission, upon forms prescribed by the commission, for a permit to engage in said business.

If the application is approved by the commission, the applicant shall enter into a good and sufficient surety bond, written by a company qualified to write such bonds in this state. The bond shall be made payable to the State of Mississippi in a sum not less than One Thousand Dollars ($1,000.00) nor more than Two Hundred Fifty Thousand Dollars ($250,000.00), the amount to be determined by the commission; or, in lieu thereof, the applicant may deposit with the commission a cash bond in the amount so determined. A personal bond in the amount so determined shall also be acceptable in lieu of a surety bond if the same is adequately secured by the pledge or assignment of a pledgeable or assignable bond, or bonds, of the State of Mississippi or the United States government. Such bond or bonds shall be in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and not to exceed the special fuel taxes estimated to become due by the distributor of special fuel for any ninety-day period. The bond required by this section shall be increased within the limits hereinabove set forth from time to time if deemed insufficient by the commission, giving to the distributor of special fuel fifteen (15) days' notice, in writing, to increase such bond, such notice to state the amount of increase demanded.

The condition of such bond shall be that the distributor of special fuel shall fully comply with all laws pertaining to distributors of special fuel and pertaining to the transportation of special fuel as regulated by this article, and that he shall pay the special fuel taxes, and the penalties provided.

SOURCES: Laws, 1999, ch. 461, § 4, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-509. Distributor permit; penalties for operating without.

Any person engaging in business as a distributor of special fuel in this state without having the permit required by Section 27-55-507, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars ($1,000.00) or imprisonment in the county jail for six (6) months or both.

SOURCES: Laws, 1999, ch. 461, § 5, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-55-511. Distributor permit; revocation.

If the commission approves the application and bond, it shall issue a permit authorizing said applicant to engage in business as a bonded distributor of special fuel, and the permit shall not be assignable or otherwise transferable. Permits may be revoked for any single business location or all such locations by the commission at any time upon ten (10) days' written notice, if the distributor shall fail to pay the special fuel taxes and penalties due within the time provided by law, or shall fail in any way to comply with all of the provisions of this article, but the cancellation shall not relieve said distributor of special fuel or his sureties from liability on his distributor of special fuel bond. No permit shall be issued to any applicant who is in arrears or default to this state, or any subdivision thereof, for any taxes.

All bonds issued under the provisions of the other motor fuel tax law and the oil tax law in effect prior to July 1, 1999 shall remain in full force and effect and all references in such bonds to oil and/or other motor fuel shall mean special fuel.

All permits issued under the provisions of the other motor fuel tax law and the oil tax law in effect prior to July 1, 1999 shall remain in full force and effect and all references on said permits to oil and/or other motor fuel shall mean special fuel.

SOURCES: Laws, 1999, ch. 461, § 6, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-513. Adoption of rules and regulations for issuance of permits.

(1) The commission may adopt rules and regulations to provide for the issuance of permits to persons performing contracts for construction, reconstruction, maintenance or repairs, where such contracts are entered into with the State of Mississippi, any political subdivision of the State of Mississippi, any department, agency or institution of the State of Mississippi or any political subdivision thereof, allowing or requiring such persons to purchase special fuel for use in performing such contracts without the payment to the distributor of the tax levied in this article, and to provide that such persons report and pay such tax directly to the commission in instances where the commission determines that such payment will facilitate and expedite the collection of the tax which may be due on special fuel used by the permittee.

(2) The distributor of special fuel is relieved of collecting and remitting the taxes levied in this article, when furnished with a copy of a permit issued pursuant to this section and the person holding the permit shall become liable for such taxes instead of the distributor. The full enforcement provisions of this article shall apply in the collection of the tax from the permittee.

(3) The commission may require the permittee to execute and file with the commission a good and valid bond written by a surety company authorized to do business in this state. The bond shall be conditioned that all taxes which may accrue to the State of Mississippi under the provisions of this article will be paid when due. Provided, further, the commission may accept a bond filed under the provisions of Section 27-65-21, Mississippi Code of 1972, when such bond is conditioned upon the payment of the taxes imposed by this article.

SOURCES: Laws, 1999, ch. 461, § 7, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-515. Marine diesel fuel or kerosene permit.

Before any person shall purchase and store diesel fuel or kerosene in marine storage, dockside storage or in barges for sale or delivery to boats, such person shall make application to the commission for a marine diesel fuel or kerosene permit. If the commission approves the application, it shall issue a permit authorizing the applicant to engage in business as a marine diesel fuel or kerosene dealer, and said permit shall not be assignable or otherwise transferable.

SOURCES: Laws, 1999, ch. 461, § 8, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-517. Regulation of the sale of dyed diesel fuel.

The commission may adopt rules and regulations allowing retail dealers to sell dyed diesel fuel. Such retail dealers shall comply with all rules and regulations pertaining to retail dealers selling dyed diesel fuel. The commission may require such retailers to execute and file with the commission a good and valid bond, written by a surety company authorized to do business in the state, conditioned that all taxes which may accrue to the State of Mississippi under the provisions of this article will be paid when due.

SOURCES: Laws, 1999, ch. 461, § 9, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-519. Excise tax on special fuel.

(1) Any person engaged in business as a distributor of special fuel or who acts as a distributor of special fuel, as defined in this article, shall pay for the privilege of engaging in such business or acting as such distributor an excise tax on all special fuel stored, used, sold, distributed, manufactured, refined, distilled, blended or compounded in this state or received in this state for sale, storage, distribution or for any purpose, adjusted to sixty (60) degrees Fahrenheit.

The excise tax shall become due and payable when:

(a) Special fuel is withdrawn from storage at a refinery, marine or pipeline terminal, except when withdrawal is by barge or pipeline.

(b) Special fuel imported by a common carrier is unloaded by that carrier unless the special fuel is unloaded directly into the storage tanks of a refinery, marine or pipeline terminal.

(c) Special fuel imported by any person other than a common carrier enters the State of Mississippi unless the special fuel is unloaded directly into the storage tanks of a refinery, marine or pipeline terminal.

(d) Special fuel is blended in this state unless such blending occurs in a refinery, marine or pipeline terminal.

(e) Special fuel is acquired tax free.

(2) The special fuel excise tax shall be as follows:

(a) Eighteen Cents (18¢) per gallon on undyed diesel fuel until the date specified in Section 65-39-35 and Fourteen and Three-fourths Cents (14.75¢) per gallon thereafter;

(b) Five and Three-fourths Cents (5.75¢) per gallon on all special fuel except undyed diesel fuel and special fuel used as fuels in aircraft; and

(c) Five and One-fourth Cents (5.25¢) per gallon on special fuel used as fuel in aircraft.

SOURCES: Laws, 1999, ch. 461, § 10, eff from and after July 1, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference in (2)(a) to "69-39-35" was changed to "65-39-35." The Joint Committee ratified the correction at its June 29, 2000, meeting.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-521. Levy of excise tax on special fuel not otherwise taxed under Section 27-55-519.

(1) An excise tax at the rate of Eighteen Cents (18¢) per gallon until the date specified in Section 65-39-35, Mississippi Code of 1972, and Fourteen and Three-fourths Cents (14.75¢) per gallon thereafter is levied on any person engaged in business as a distributor of special fuel or who acts as such who sells:

(a) Special fuel for use in performing contracts for construction, reconstruction, maintenance or repairs, where such contracts are entered into with the State of Mississippi, any political subdivision of the State of Mississippi, or any department, agency, institution of the State of Mississippi or any political subdivision thereof.

(b) Dyed diesel fuel or kerosene to a state or local governmental entity for use on the highways in a motor vehicle.

(c) Special fuel for use on the highway.

(2) An excise tax at the rate of Eighteen Cents (18¢) per gallon until the date specified in Section 65-39-35, Mississippi Code of 1972, and Fourteen and Three-fourths Cents (14.75¢) per gallon thereafter is levied on any person who:

(a) Uses dyed diesel fuel or kerosene in a motor vehicle on the highways of this state in violation of Section 27-55-539.

(b) Purchases or acquires undyed diesel fuel or kerosene for non-highway use and subsequently uses such diesel fuel or kerosene in a motor vehicle on the highways of this state.

(c) Purchases or acquires special fuel for use in performing contracts as specified in this section.

SOURCES: Laws, 1999, ch. 461, § 11, eff from and after July 1, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in statutory references. The references in (1) and (2) to "69-39-35" were changed to "65-39-35." The Joint Committee ratified the corrections at its June 29, 2000, meeting.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

JUDICIAL DECISIONS

1. In general.

The tax levied by Code 1972, § 27-55-313 [now repealed] on diesel fuel used by contractors in the performance of state contracts is not limited in its application to diesel fuel used in motor vehicles, but applies to all diesel fuel used by such contractors regardless of the specific use made of the fuel. That other fuels, notably propane, are not subject to the disputed tax when used as a heating agent does not constitute discrimination violative of the equal protection clause. Sharpe v. Standard Oil Co., 322 So. 2d 457 (Miss. 1975), appeal dismissed, 425 U.S. 947, 96 S. Ct. 1720, 48 L. Ed. 2d 191 (1976).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 524 et seq.

§ 27-55-523. Monthly report and remittance.

For the purpose of determining the amount of his liability for the tax imposed by this article, each bonded distributor of special fuel shall, not later than the twentieth day of the month next following the month in which this article becomes effective, and not later than the twentieth day of each month thereafter, file with the commission a monthly report which shall include a statement of the number of gallons of special fuel received and sold by such distributor of special fuel within this state during the preceding calendar month, and such other information as may be reasonably necessary for the proper administration of this article.

At the time of filing each monthly report with the commission, a distributor may take a credit for the number of gallons of special fuel that he purchased during the preceding calendar month from a distributor who pays the excise tax imposed by this article on such special fuel.

At the time of filing each monthly report with the commission, each distributor of special fuel shall pay to the commission the full amount of the special fuel tax due from such distributor for the preceding calendar month.

Reports and payments sent to the commission by mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be postmarked by the first working day following the due date in order to be considered timely filed.

The monthly report of the distributor of special fuel shall be prepared and filed with the commission on forms prescribed by the commission, or the distributor of special fuel may, with the approval of the commission, furnish the required information on machine-prepared schedules. Such monthly reports or schedules shall be signed by the distributor or his duly authorized agent and shall contain a declaration that the statements contained in such report are true and correct and are made under the penalty of perjury.

When special fuel, which would otherwise be taxable under the provisions of this article, is imported, sold, delivered, or exported, under conditions which will exclude such special fuel from the tax levied under this article by reasons of one or more of the exemptions provided in this article, deduction for such exempt special fuel may be taken without prior approval of the commission on the monthly report of the bonded distributor of special fuel importing, selling, delivering, or exporting such special fuel. Provided, however, that the commission may require proof to be furnished of such deduction for exempt special fuel.

When the Five and Three-fourths Cents (5.75¢) per gallon tax has accrued or has been paid on special fuel that is taxed at Eighteen Cents (18¢) per gallon, a deduction of Five and Three-fourths Cents (5.75¢) per gallon may be made.

SOURCES: Laws, 1999, ch. 461, § 12, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-525. Person not bounded as distributor of special fuel subject to provisions that apply to bonded distributors.

Every person, other than a bonded distributor of special fuel, who shall purchase, or otherwise acquire special fuel within this state on which the tax has not been paid or covered by a bond of a distributor of special fuel, or otherwise exempt, shall be subject with respect to such special fuel, to all the provisions that apply to a bonded distributor of special fuel and shall be further subject to the additional penalties hereinafter provided.

SOURCES: Laws, 1999, ch. 461, § 13, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-527. Special fuel taxes; exemptions and allowances.

(1) There shall not be included in the measure of the tax levied in this article any special fuel:

(a) Sold or delivered by a bonded distributor of special fuel to a second bonded distributor of special fuel within this state, but nothing in this exclusion shall exempt the second bonded distributor of special fuel from paying the tax unless the second bonded distributor of special fuel sells or delivers said special fuel to a third bonded distributor of special fuel, in which event the third bonded distributor of special fuel shall be liable for the tax.

(b) Sold to the United States government for use of the Armed Forces only, and delivered in quantities of not less than four thousand (4,000) gallons.

(c) Delivered to a bonded warehouse for storage within this state for the United States Department of Interior.

(d) Exported to a destination beyond the borders of this state by a bonded distributor of special fuel when the tax on such special fuel has been paid or on which the tax liability imposed by this article has accrued against such bonded distributor.

(e) Imported by, or sold to, any refiner or processor in this state for the purpose of being refined or further processed.

(f) Sold or delivered to any person within this state to be used as a herbicide or as a solvent for insecticides, wood preservatives and like products, or when so used in a commercial process that they become a component part of any manufactured product or where used as a processing agent in the treatment of raw material in manufacturing any product.

(g) Sold or delivered to be used for test purposes at any regularly established testing laboratory in this state.

(h) Sold to be consumed as fuel by any boat, vessel, ship, towboat or dredgeboat, or sold to the holder of a Marine Dealers Permit for resale or distribution as fuel for a boat, vessel, ship, towboat or dredgeboat.

(i) Sold as bunker oil or sold to be used for the generation of heat in a firebox or furnace.

(j) Sold or delivered to be used for the purpose of generating electricity.

(k) Sold for use as fuel in a railroad locomotive when subject to the tax levied by Section 27-59-301 et seq.

(*l*) Sold or delivered in bond, or sold or delivered, to any person within a foreign-trade zone within this state and sold, used, consumed, distributed, stored or withdrawn from storage and used to propel aircraft on an international flight including any interim stops within the United States so long as the origin or ultimate destination of the aircraft is outside the United States and District of Columbia. As used in this paragraph, "foreign-trade zone" means a foreign-trade zone operated and maintained by a public or private corporation under the provisions of Sections 59-3-31 through 59-3-37.

(m) Sold to be consumed as fuel by planes used by a commercial airline for new interstate air service offered by a new carrier in the market, for interstate service to a new city by an existing airline or for additional interstate service to a city already served by a commercial airline, for a period of twelve (12) months after the date the service is established.

(2) The exemptions set forth in paragraphs (f), (h), (i) and (j) of subsection (1) of this section shall not apply to special fuel used in performing contracts for construction, reconstruction, maintenance or repairs, where such contracts are entered into with the State of Mississippi, any political subdivision of the State of Mississippi, or any department, agency or institution of the State of Mississippi or any political subdivision thereof.

(3) Evidence of exempt transactions provided in this section and the subsections thereof shall consist of copies of invoices, documents or any other evidence that may be required by the commission.

(4) Any person other than a bonded distributor of special fuel who has delivered or sold special fuel on which the tax has been paid by him to the

vendor may, if the special fuel is subject to exemption under this article, assign his claim for exemption to any bonded distributor of special fuel in this state. Such distributor may deduct the amount of the tax exemption from his next special fuel report, provided the distributor furnishes evidence satisfactory to the commission that the claim for exemption is valid.

(5) When special fuel is withdrawn from the storage tank of a refiner, processor, marine or pipeline terminal operator and the tax is paid on such special fuel and it or any part thereof cannot be delivered to a purchaser, said refiner, processor, marine or pipeline terminal operator may deduct the tax on all or that portion of such special fuel not delivered to a purchaser from its next special fuel distributor's tax report, provided that such refiner, processor, marine or pipeline terminal operator submits with such tax report: (a) a written report setting forth the reasons why such delivery could not be made, and (b) proof or evidence satisfactory to the commission that the tax in question had theretofore been paid to the commission, and (c) proof or evidence satisfactory to the commission that the nondelivered special fuel was actually returned to the refinery, processor, marine or pipeline terminal from which it was taken for the purpose of delivering it to a purchaser; and provided further, that immediately upon ascertainment by the refiner, processor, marine or pipeline terminal operator that said special fuel cannot be delivered, he or it shall immediately notify the commission of this fact and before moving his or its truck or other means of transporting such special fuel from the intended point of delivery; and should the commission desire to inspect such truck or other means of conveyance, such refiner, processor, marine or pipeline terminal operator shall arrange for such inspection at that point or at such other point that may be designated by the commission.

(6) In order to claim exemptions provided for under this article, the distributor of special fuel must file claims therefor within three (3) years from the date of sale or delivery; otherwise, claims for such exemptions shall be disallowed.

SOURCES: Laws, 1999, ch. 461, § 14; Laws, 2007, ch. 504, § 1; Laws, 2013, ch. 411, § 1, eff from and after July 1, 2013.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Tax exemptions generally, see § 27-31-1 et seq.

Ad valorem tax exemption of oil, gas, and other petroleum products refined in state, see § 27-31-19.

Establishment and operation of foreign trade zone by public or private corporation, see §§ 59-3-31 through 59-3-37.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 54, 57.

§ 27-55-529. Repealed.

Repealed by Laws of 2004, ch. 470, § 3 effective July 1, 2004.

Laws, 1999, ch. 461, § 15, eff from and after July 1, 1999.

Editor's Note — Former § 27-55-529 was entitled: "Sale of undyed diesel fuel for nonhighway use."

§ 27-55-531. Regulation of dyed diesel fuel and kerosene to be used for nonhighway purposes.

The commission, in its discretion, may promulgate rules setting forth requirements for marking or identifying diesel fuel or kerosene to be used for nonhighway purposes.

Storage facilities for nonhighway use diesel fuel or for nonhighway use kerosene shall be plainly marked "NONHIGHWAY DIESEL FUEL" or "NONHIGHWAY KEROSENE" in lettering of not less than four (4) inches in height on a contrasting background. Where such storage facilities are underground, then all pumps or dispensing equipment shall be plainly marked as required in this section. Where such diesel fuel or kerosene is delivered directly into the fuel tank or equipment for nonhighway use, either the fuel tank or some part of such equipment as near to the fuel tank as possible shall be plainly marked "NONHIGHWAY DIESEL FUEL" or "NONHIGHWAY KEROSENE" in lettering of not less than four (4) inches in height on a contrasting background. Separate storage facilities are required for highway use diesel fuel and kerosene and shall be marked "FOR HIGHWAY USE" in lettering of not less than four (4) inches in height on a contrasting background.

Any person who purchases, receives, acquires or uses any nonhighway diesel fuel or kerosene shall be liable for the tax levied by Sections 27-55-519 and 27-55-521, if said diesel fuel or kerosene is used on the highways of this state or for any purpose taxable under such sections.

All sales of diesel fuel for nonhighway use shall be evidenced in writing and such invoice shall bear the name of the purchaser and seller, the date of delivery of such diesel fuel, the kind and quantity of the product delivered and the use for which such nonhighway diesel fuel was purchased. Such invoices shall be retained by the purchaser of nonhighway diesel fuel for a period of not less than three (3) years. Invoices made to cash shall not be considered as complying with the terms of this article.

SOURCES: Laws, 1999, ch. 461, § 16, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:
"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-533. Credit for accidental mixture of gasoline and special fuel and accidental mixture of dyed and undyed special fuel.

(1) When gasoline and special fuel on which the tax has been paid are accidentally mixed, the distributor of special fuel or other person owning such mixture may claim credit for the gasoline tax and/or special fuel tax on the gasoline and special fuel constituting such mixture.

(2) When dyed special fuel and undyed special fuel are accidentally mixed and the mixture is converted to nonhighway use special fuel, the distributor of special fuel or other person owning such mixture may claim credit for any taxes exceeding Five and Three-fourths Cents (5.75¢) per gallon which have been paid on such mixture.

(3) Proof satisfactory to the commission must be submitted with any claim for credit made pursuant to this section or the claim will be disallowed.

(4) The special fuels distributor or other person owning a mixture described in this section shall notify the commission immediately after gaining knowledge of such mixture.

(5) Upon receipt of the claim for credit, the commission shall determine the amount of refund or tax credit due the claimant and, in the case of a refund, the amount shall be refunded as provided in Section 27-55-19, Mississippi Code of 1972.

SOURCES: Laws, 1999, ch. 461, § 17, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:
"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the

filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-535. Special fuel tax refunds; losses.

When special fuel is lost or destroyed in quantities of seven hundred fifty (750) gallons or more through explosion, fire, collision, storage tank wreckage, wreckage of loading or unloading facilities, such as pumps and lines, or acts of Providence while in storage in this state or while being transported in this state, the owner of the special fuel shall be entitled to tax credit or refund of the tax paid thereon.

The department shall be notified by the owner of the lost or destroyed special fuel within five (5) days after the loss or destruction is discovered. The department shall make an investigation of the facts and circumstances surrounding the loss or destruction as may be reasonably necessary for the effective administration of this article.

The claim shall be made in the name of the owner of the lost or destroyed special fuel and shall be signed by the owner or his authorized agent and filed within three (3) years after the date of loss. All claims must be accompanied by proof satisfactory to the department that the special fuel for which credit is claimed was destroyed by or through one (1) of the means set forth in the first paragraph of this section, and in all cases where the special fuel alleged to have been destroyed was covered by insurance, the department shall not approve such claims unless and until the insurer has acknowledged and actually paid the loss.

Upon receipt of the claim, the department shall determine the amount of refund or tax credit due the claimant and in the case of refund the amount shall be refunded to the claimant as provided in Section 27-55-19.

If the department determines that any refund claim shall not be paid, it shall notify the claimant stating the reason or reasons why the claim is disallowed.

A claimant may, within sixty (60) days from the date of the written notice of the disallowance of his claim, appeal to the board of review as provided by law.

SOURCES: Laws, 1999, ch. 461, § 18; Laws, 2005, ch. 499, § 25; Laws, 2009, ch. 492, § 92, eff from and after July 1, 2010.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the

filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 27-55-537. Administration, enforcement and penalties.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of such chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this article, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in the sales tax law, except that in cases of conflict, then the provisions of this article shall control.

SOURCES: Laws, 1999, ch. 461, § 19, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Mississippi Sales Tax Law, see § 27-65-1 et seq.

§ 27-55-539. Use of dyed diesel fuel in motor vehicle.

It shall be unlawful to use dyed diesel fuel or kerosene in a motor vehicle on a highway unless that use is permitted under Section 4082 of the Internal Revenue Code. A person who operates on a highway a motor vehicle whose supply tank contains dyed diesel fuel or kerosene whose use is unlawful under this section shall be liable for a penalty of One Thousand Dollars ($1,000.00) which shall be in addition to any taxes that may be due.

SOURCES: Laws, 1999, ch. 461, § 20, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Federal Aspects — Exemptions for diesel fuel and kerosene, see 26 USCS § 4082.

§ 27-55-541. Transportation reports.

Every common or contract carrier transporting special fuel, by whatever means, from a point outside this state to any point in this state, shall report, in writing, all deliveries of special fuel to points within this state to the commission on forms prescribed by the commission or, with the approval of the commission, furnish the required information on machine-prepared schedules, and such other information as may be necessary for the proper administration of this article.

The reports required in this section shall be for information purposes only and the commission may, in its discretion, waive the filing of any of these reports not necessary for proper administration of this article. The reports required in this section shall be signed and contain a declaration that the statements contained therein are true and are made under penalty of perjury. Such reports required in this section shall be filed with the commission on or before the 20th day of each month following the month in which the transaction occurred.

Any such person failing or refusing to file such report on or before the date required by law, or who shall omit any shipment of diesel fuel, kerosene or special fuel from such report, shall be subject to a penalty which shall be a percentage of the tax imposed by law on the total amount of the taxable products involved as follows:

(a) Not more than ten percent (10%) for the first failure, refusal or omission; and

(b) Not more than twenty percent (20%) for the second and any subsequent failure, refusal or omission.

The commission may waive such penalty upon good cause shown.

SOURCES: Laws, 1999, ch. 461, § 21, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-543. Metering requirements.

A gallonage measuring meter shall be installed on each pipeline used for the withdrawal of special fuel, subject to excise taxes provided in this article, from the storage tank of any refinery, pipeline terminal, water terminal or any terminal that does not have stationary bulk storage tanks at such terminal within the State of Mississippi, and no such special fuel shall be withdrawn except through gallonage measuring meters. No bypass installation shall be constructed around the meters. The meters shall be installed and maintained as required by the commission.

The commission is authorized to verify the accuracy of meters used for the input or withdrawal of special fuel at a refinery or terminal. All meters shall be sealed by either the terminal operator or the commission.

It shall also be unlawful for any person to withdraw any taxable special fuel, from storage tanks as covered by this article except through the meters prescribed herein. The violation of any of the provisions of this section shall constitute a misdemeanor and, upon conviction, such person shall be subject to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or to imprisonment for not more than sixty (60) days in jail, or to both such fine and imprisonment.

SOURCES: Laws, 1999, ch. 461, § 22, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-545. Retention of records by distributors of special fuel and other persons; statute of limitations for actions by state for recovery of additional amounts.

Each distributor of special fuel shall maintain and keep for a period of three (3) years a record of all special fuel purchased, received, procured, manufactured, refined, compounded, used, sold, stored or delivered within this state by such distributor, together with invoices, bills of lading, and other pertinent records and papers as may be reasonably required by the commission.

It shall be the duty of every person purchasing special fuel from a distributor of special fuel or other person for the purpose of sale or distribution to maintain and keep for a period of three (3) years a record of all special fuel received, together with delivery tickets, invoices, bills of lading and such other records as the commission may require.

All sales made by a distributor of special fuel, other than retail sales from a service station, shall be evidenced in writing, signed by the seller, or his agent, shall bear the date of purchase, name and address of the purchaser and the seller, and shall show the kind and quantity of the product purchased. Sales tickets and invoices made to cash shall not be considered as complying with the terms of this article.

If, in the normal conduct of business of a distributor of special fuel or purchaser, the records of such distributor or purchaser are maintained and kept at an office outside this state, it shall be a sufficient compliance with this section if the records shall be made available for audit and examination by the commission at such office located outside Mississippi. If a distributor or purchaser fails or refuses to permit the commission or any of its employees to check and audit its records during the usual business hours of the day, the commission shall have authority to subpoena said records and have them brought to the office of the commission within ten (10) days after the subpoena is served on the distributor of special fuel or purchaser.

If a distributor of special fuel or purchaser fails to maintain adequate records, or if an audit of the records of said distributor or purchaser, or any report filed by him or any other information discloses that taxes are due and unpaid, the commission shall make assessments of taxes, damages and interest from any information available, which shall be prima facie correct.

All actions by this state for the recovery of additional amounts claimed as tax due under this article must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided that in the case of a fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time. However, when an examination of a taxpayer's records to verify returns made under this article has been initiated and the taxpayer notified thereof either by certified mail or personal delivery of a notice by an agent of the commissioner, within the thirty-six-month examination period provided herein, the determination of the correct tax liability may be made by the commission after the expiration of said thirty-six-month examination period, provided that said determination shall be made with reasonable promptness and diligence.

SOURCES: Laws, 1999, ch. 461, § 23; Laws, 2006, ch. 344, § 2, eff from and after July 1, 2006.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-547. Right to inspection.

The commissioner and his agents and employees shall have full access, ingress, and egress at all reasonable hours to and from any place or building where special fuel may be received, stored, transported, sold, offered or exposed for sale, manufactured, refined, distilled, compounded or blended. The commissioner and his agents and employees shall have the right to open and inspect any case, package, or other container, any tank, pump, tank car or storage tank in which special fuel is kept and enter upon any barge, vessel, or other vehicle transporting special fuel and, with instruments conforming to the weights and measures adopted by the United States Bureau of Standards, check any measuring device or volume of weight of the contents of any such container.

The commission, its employees or agents and enforcement officers of the Mississippi Department of Transportation are hereby authorized to inspect any vehicle transporting special fuel over the highways of this state, or any boat, barge or vessel transporting special fuel over the waters of this state, to examine the contents of such vehicle, boat, barge or vessel, to take a sample, not to exceed one (1) gallon, of the special fuel contained in such vehicle, boat, barge or vessel, and to inspect the bills of lading, manifest, invoices or other records pertaining to the special fuel being transported.

The commission, its employees or agents and enforcement officers of the Mississippi Department of Transportation are hereby authorized to stop any motor vehicle traveling the highways of this state; to inspect the contents of the motor vehicle's fuel supply tank; to take a sample, not to exceed one (1) gallon, of the contents of the fuel supply tank of such motor vehicle and to examine any invoices, receipts or other documents pertaining to the contents of the motor vehicle's fuel supply tank.

Any person who refuses to allow an inspection as authorized in this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment.

SOURCES: Laws, 1999, ch. 461, § 24, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51 effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-55-549. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

Editor's Note — Former § 27-55-549 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-55-551. Commission to institute proceedings; sequestration; lien; seizure.

The commission is hereby authorized and empowered to institute legal proceedings for any and all violations of this article, to recover taxes, damages or penalties due under this article. All taxes and damages recovered in any proceedings by the commission shall be paid over and disposed of as any and all other special fuel taxes are required to be. Any chancellor or judge authorized to grant remedial writs shall grant writs of sequestration for the impounding of special fuel on which the excise tax or penalty is owed. Before any writ of sequestration shall be issued under this section, the complainant shall make an affidavit showing that it had good cause to believe, and does believe, that there is an excise tax or penalty owed the State of Mississippi on the special fuel sought to be sequestered and that unless said special fuel is sequestered and impounded, said special fuel will be removed, concealed, or disposed of. Upon such affidavit being presented to any chancellor or judge authorized to grant remedial writs, said chancellor or judge shall order said writ to be issued upon the filing of a bill of complaint for the collection of the excise tax on said special fuel. The writ of sequestration shall then be issued and the property dealt with in the manner now provided by law for other writs of sequestration. Where the State of Mississippi is the complainant, no bond shall be required of said state for the issuance of said writ of sequestration.

The State of Mississippi shall have a lien upon all of the property of every distributor or person acting as a distributor of special fuel without a permit, used in the operation of his business as such distributor, for the excise taxes levied by this article and due or to become due the State of Mississippi. Such liens or encumbrances of whatever character shall be paramount to private liens and to the rights of any holder of the legal title in or to any pumps, tanks, inventories of special fuel and other petroleum products, motor vehicles, or other personal property used in the operation of said business.

The commission shall have the right, when taxes due the State of Mississippi are delinquent under this article, or where any person acting as a distributor of special fuel without a permit receives special fuel in this state without paying the tax thereon, to cause a writ of summons and seizure to issue, returnable to the court having jurisdiction thereof, in like manner as such writs are authorized to be issued by Chapter 7 of Title 85, Mississippi Code of 1972. Such writ shall be directed to the proper officer or to the commission commanding the officer or the commission, as the case may be, to seize the property upon which a lien exists as hereinabove provided. After the issuance of such writ, such actions and proceedings shall be had on such writ as presently provided for the enforcement of purchase money security interests by the statutes of this state. The commission shall have the right to stop and hold any moving or movable equipment subject to seizure pursuant to the provisions of this paragraph pending the issuance of process.

It is expressly provided that the remedies set out in the foregoing paragraph shall be cumulative and that no action taken by the commission shall be construed to be an election on the part of this state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this article.

SOURCES: Laws, 1999, ch. 461, § 26, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-553. Refund of taxes erroneously or illegally collected.

In the event that any taxes or penalties imposed by this article have been erroneously or illegally collected from a distributor or other person, the commission may permit such distributor of special fuel or other person to take credit against a subsequent tax report for the amount of the erroneous overpayment, or the amount thereof may be refunded to the distributor or other person in the same manner as provided in Section 27-55-19.

No refunds shall be made under the provisions of this section unless a written claim is filed setting forth the circumstances by reason of which such refund should be allowed. Such claim shall be in the form as the commission shall prescribe and shall be filed with the commission within three (3) years from the date of payment of the taxes erroneously or illegally collected. Nothing in this article shall be construed to prohibit a refund or credit for tax paid on special fuel not subject to tax or which is exempt from tax, provided there has not been a willful disregard of the provisions of this article and further provided that the claim therefor is filed within three (3) years.

SOURCES: Laws, 1999, ch. 461, § 27, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-555. Funds placed in depositories.

All funds collected by the commission under provisions of this article, or under the provisions of any other law, which may now or in the future be collected by said commission, are hereby designated as public funds of the State of Mississippi and shall be by it deposited in accordance with Section

7-9-21. Allocations of gasoline, diesel fuel or kerosene tax to the counties shall be made by the commission as provided by law and reported to the State Treasurer at the end of each month. The State Treasurer shall issue his requisition in payment thereof on the State Fiscal Officer, who shall issue his warrant on the State Treasurer, as is provided for the disbursement of other state funds.

SOURCES: Laws, 1999, ch. 461, § 28, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-557. Exchange of information with other states.

The commission may provide any department or agency of any state or the United States responsible for the enforcement of special fuel taxes any information it may have relative to the manufacture, receipt, sale, use, transportation and/or shipment of special fuel by any person. The commission may provide any department or agency of any state or the United States that is responsible for the enforcement of special fuel taxes any demographic information it may have relative to distributors of special fuel. The commission may place such information in a national database or clearinghouse in order to facilitate the exchange of such information.

SOURCES: Laws, 1999, ch. 461, § 29; Laws, 2001, ch. 390, § 2, eff from and after passage (approved Mar. 11, 2001.)

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-559. Evidence of product transported; unlawful for carriers or transporters to divert special fuel shipments to a destination other than the destination on the manifest or bill of lading; notice of intent to import special fuel; penalties.

Every person hauling, transporting or conveying more than five hundred (500) gallons of special fuel over the highways, streets, alleys or waters of this state, or into this state over any highway, street, alley or water route, shall, during the entire time he is so engaged, have in his possession a bill of sale, bills of lading, invoices or other written evidence, each of which shall be serially numbered, showing the kind and amount of special fuel being transported, the name and address of the person from whom such special fuel was received, and the name and address of the person to whom delivery is to be made. The vehicle or boat conveying such special fuel shall have clearly printed on it the name and address of the person transporting the special fuel on both sides of the vehicle or boat in well-balanced letters of not less than two (2) inches in height on a contrasting background.

Any person transporting special fuel without a shipping document containing the required information or who diverts a shipment of special fuel to a destination other than the destination listed on such shipping document or who alters a shipping document without notice to the commission shall be liable for a fine of One Thousand Dollars ($1,000.00) per offense and the entire amount of the state excise tax upon such special fuel shall be deemed due and payable, plus a penalty of twenty-five percent (25%) of the amount of such tax. Any authorized representative of the commission or the enforcement officers of the Mississippi Department of Transportation shall have the right to seize or impound such vehicle or boat until the excise tax and penalty have been paid. Notice to the commission shall consist of contacting the National Diversion Registry, reporting the diversion and obtaining a registration number.

Any person other than a common or contract carrier bringing special fuel into this state in quantities of more than five hundred (500) gallons shall give notice to the commission of his intent to import such special fuel. The commission is authorized to promulgate rules setting forth the manner in which such notice is to be given. However, if information on special fuel imported into this state can be accurately secured from other sources by the commission, it may waive the requirements of such notice.

If any person, other than a common or contract carrier, shall transport special fuel over the highways of this state by motor vehicle without having given the notice required by this section, or if a copy of such notice is not carried in such motor vehicle as required by this section, the entire amount of the state excise tax upon such special fuel being transported shall be deemed due and payable, plus a penalty of twenty-five percent (25%) of the amount of such tax, and any authorized representative of the commission or enforcement officers of the Mississippi Department of Transportation shall have the right to seize or impound the motor vehicle in which such special fuel is being transported until such excise tax together with the penalty thereon has been paid. Provided, however, that the penalty shall not apply when the driver of the truck stops at the first weighing station in the line of travel and secures the signature of the officer on duty on the import notice.

SOURCES: Laws, 1999, ch. 461, § 30; Laws, 2004, ch. 525, § 3, eff from and after July 1, 2004.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Laws of 2004, ch. 525, § 4, effective July 1, 2004, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 55, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-55-561. Apportionment of tax.

The amount received on special fuel as defined in this article shall be paid and apportioned in accordance with Section 27-5-101.

SOURCES: Laws, 1999, ch. 461, § 31, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the

filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Apportionment of excise taxes on gasoline and petroleum products, see § 27-5-101.

§ 27-55-563. Authority to make rules and regulations.

The commission is hereby given power and authority to make all rules and regulations, not inconsistent with the provisions of this article, with reference to all petroleum excise tax provisions and exemptions governing the making of reports and contents of same and doing any and all other duties pertaining to the making of reports and payment of taxes, and such other matters as will, in the judgment of the commission, contribute to a more efficient administration of all the petroleum excise tax provisions of this article. Such rules and regulations, when made, shall have the same binding force and effect as if incorporated in this article.

SOURCES: Laws, 1999, ch. 461, § 32, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-565. Effect of prior law.

This article shall not release or relinquish any liability or penalty incurred or right accrued under the laws of this state as they existed before July 1, 1999 and such laws shall be considered as remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of any such liability, penalty, or right. Such laws shall govern the reporting and payment of taxes on oil and other motor fuel received, sold, distributed or used by bonded distributors or other persons before July 1, 1999. Any and all matters, orders, hearings, and proceedings pending before the commission or before any court under provisions of such prior laws shall continue with the same effect as though such prior laws were not amended or repealed.

SOURCES: Laws, 1999, ch. 461, § 33, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-567. Tax on undyed diesel fuel held in storage.

(1) A tax at a rate of Twelve and One-fourth Cents (12.25¢) per gallon shall apply to all undyed diesel fuel, on which the other motor fuel tax has not been paid, held in storage at a bulk plant or retail location on July 1, 1999, by any distributor of special fuel.

(2) The commission shall determine the time and manner of reporting the quantities of undyed diesel fuel in storage on July 1, 1999, and the payment of any taxes due.

SOURCES: Laws, 1999, ch. 461, § 34, eff from and after July 1, 1999.

Editor's Note — Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-55-569. Unlawful purchase of untaxed fuel for use in highway construction equipment; penalties.

In addition to any other penalty authorized by law, any contractor or other person or entity who knowingly and willfully purchases untaxed fuel for use in equipment being utilized on a road or highway construction site in Mississippi without paying any tax on that fuel that is due to the State of Mississippi, is guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars ($1,000.00) or more than One Hundred Thousand Dollars

($100,000.00), or imprisoned in the county jail for not more than one (1) year, or both.

SOURCES: Laws, 1999, ch. 388, § 1, eff from and after July 1, 1999.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 57

Tax on Oils

Article 1. Lubricating Oil 27-57-1
Article 3. Other Oils. [Repealed]

ARTICLE 1.

LUBRICATING OIL.

SEC.
27-57-1. Administration of article.
27-57-3. Purpose of article.
27-57-5. Definitions.
27-57-7. Distributor; application for permit; bond.
27-57-9. Distributor; revocation of permit; injunction.
27-57-11. Excise tax on lubricating oil.
27-57-13. Monthly report and remittance.
27-57-15. Report from person not bonded as distributor.
27-57-17. Lubricating oil tax; exemptions.
27-57-19. Lubricating oil tax; refunds.
27-57-21. Administration and enforcement.
27-57-23. Repealed.
27-57-25. Retention of records by distributors and other persons; statute of limitations for actions by state for recovery of additional amounts.
27-57-27. Right to inspection.
27-57-29. Repealed
27-57-31. Commission to institute proceedings; sequestration; lien; seizure.
27-57-33. Refund of taxes erroneously or illegally collected.
27-57-35. Funds placed in depositories.
27-57-37. Deposit of tax receipts.
27-57-39. Exchange of information with other states.
27-57-41. Evidence of product transported; inspections.
27-57-43. Authority to make rules and regulations.
27-57-45. Effect of prior law.

§ 27-57-1. Administration of article.

The Department of Revenue, hereinafter called the "commission" or the "department," is hereby vested with the sole power and authority, and is charged with the duty of administering and enforcing the terms and provisions of this article.

SOURCES: Codes, 1942, § 10078-01; Laws, 1969 Ex Sess, ch. 56, § 1; Laws, 1981, ch. 468, § 27; Laws, 2009, ch. 492, § 93, eff from and after July 1, 2010.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Taxes on gasoline and other motor fuels, see § 27-55-1 et seq.

Liquefied compressed gas tax, see § 27-59-1 et seq.

Interstate commercial carriers motor fuel tax, see § 27-61-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 524 et seq.

§ 27-57-3. Purpose of article.

It is declared to be the purpose and intention of the legislature to impose an excise on all persons engaged in the business of selling or distributing lubricating oil in the State of Mississippi, directly or indirectly, computed at the rates named in this article, subject to the exemptions and refunds herein enumerated, and the chancery court is hereby given jurisdiction to inquire into all violations and to impose and inflict the penalties herein provided; and especially is the chancery court hereby authorized and empowered to require any and all persons to disclose and discover full information with reference to their dealing in and handling of petroleum products as hereinbefore provided. Any and all persons making the disclosures and discoveries prayed for by any bill filed in the chancery courts of the State of Mississippi shall be and they are hereby given full and complete immunity from all fines and prison sentences imposed by this article.

SOURCES: Codes, 1942, § 10078-12; Laws, 1969 Ex Sess, ch. 56, § 12, eff from and after January 1, 1970.

§ 27-57-5. Definitions.

The words, terms and phrases as used in this article shall have the following meanings unless the context requires otherwise:

(a) "Lubricating oil" means all petroleum-based oils or synthetic lubricants intended for use in the crankcase of an internal combustion engine, either spark ignition or diesel type. The purpose of "lubricating oil" is to reduce friction between two (2) solid surfaces moving relative to one another. Lubricating oil shall not mean spindle oils, cutting oils, steam cylinder oils, transmission fluids or oils, gear oils, industrial oils, electrical insulating oils, manufactured, recommended, advertised and intended for such; lubricating oil specifically designed for use in large stationary engines of five hundred (500) horsepower or more; oils specifically designed for use in aircraft or outboard motors, or lubricating oil additives and compounds, manufactured, recommended, advertised and intended for use as an additive or compound and packaged in quantities of one (1) gallon or less; oils which would cause damage to an internal combustion engine if used as a lubricant, or special purpose oils where the finished cost would make its use as a lubricating oil in an internal combustion engine economically prohibitive, or oils used as raw materials in manufacturing processes and any grease which is classified as a lubricant and which is manufactured, recommended, advertised and intended for use as such.

(b) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(c) "Class A distributor" means any person who acquires lubricating oil on which the tax levied by this article has not been paid and sells or delivers lubricating oil to wholesalers, retailers or directly to consumers.

(d) "Commission" or "department" means the Department of Revenue.

(e) "Refiner" or "processor" shall mean every person who shall receive, produce, manufacture, refine, distill, blend or compound lubricating oil in this state, when such person shall engage in refining or processing petroleum products in this state, and the blending or mixing process produces a finished product with different physical and chemical properties from the original products.

(f) "Waters" shall mean public waters.

(g) "Retailer" means every person who sells lubricating oil at retail.

SOURCES: Codes, 1942, § 10078-02; Laws, 1969 Ex Sess, ch. 56, § 2; Laws, 1972, ch. 479, § 1; Laws, 1978, ch. 358, § 1; Laws, 1982, ch. 438, § 5; Laws, 2009, ch. 492, § 94, eff from and after July 1, 2010.

Editor's Note — Laws of 1982, ch. 438, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 27-57-7. Distributor; application for permit; bond.

Before any person shall engage in business as a Class A distributor of lubricating oil, as defined in this article, in this state he shall first make application to the commission, upon forms prescribed by the commission, for a permit to engage in said business.

If said application is approved, the commission may require said applicant to enter into a good and sufficient surety bond, written by a company qualified to write such bonds in the State of Mississippi, which bond shall be made payable to the State of Mississippi in a sum not less than One Thousand Dollars ($1,000.00) nor more than Two Hundred Fifty Thousand Dollars ($250,000.00); or in lieu thereof, deposit with the commission a cash bond in the aforesaid amount. A personal bond in the aforesaid amount shall also be acceptable if the same is secured by bonds of the State of Mississippi or the United States Government. Such bond or bonds shall be in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and not to exceed the lubricating oil tax estimated to become due by the said distributor for any ninety-day period. The bond herein required shall be increased within the limits hereinbefore set forth from time to time if deemed insufficient by the commission giving to the licensee fifteen (15) days' notice, in writing, to increase said bond, said notice to state the amount of increase demanded.

The bond required by this section shall be conditioned that the distributor will fully comply with all laws pertaining to distributors of lubricating oil and pay all excise taxes and penalties provided. Provided that bonds given by distributors under the laws heretofore in force shall remain in full force and effect. Provided, however, any person who has already furnished bond under a prior petroleum tax law or shall furnish a bond to meet the requirements of any petroleum tax law administered by the commission shall not be required to furnish an additional bond, but said person shall be subject to all other conditions, requirements and liabilities imposed herein upon a distributor of lubricating oil.

SOURCES: Codes, 1942, § 10078-03; Laws, 1969 Ex Sess, ch. 56, § 3; Laws, 1972, ch. 479, § 2; Laws, 1981, ch. 468, § 28; Laws, 1982, ch. 438, § 6, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 438, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

RESEARCH REFERENCES

Am Jur. 8B Am. Jur. Legal Forms 2d, Garages, Service Stations, and Parking Facilities, § 128:15 (bond of gasoline distributor).

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 27-57-9. Distributor; revocation of permit; injunction.

If the commission approves the application and bond, it shall issue a permit authorizing said applicant to engage in business as either a Class A or Class B distributor and said permit shall not be assignable or otherwise transferable. Said permits may be revoked for a single business location or all such locations by the commission at any time upon ten (10) days' written notice, if said distributor shall fail to pay all excise taxes and penalties due within the time provided by law where so required, or shall fail in any way to comply with all the provisions of this article, but such cancellation shall not relieve the distributor or his sureties from liability on the distributor's bond.

No permit shall be issued any applicant who is in arrears or default to the state or any subdivision thereof for any taxes on any petroleum products. Copies of all permits shall be filed and recorded alphabetically by the comptroller.

Any person engaging in the business of a distributor without a permit having first been obtained as provided herein, or after any permit granted a distributor has been revoked, shall forfeit all right to do business as a distributor of lubricating oil in the State of Mississippi for a period of not less than one (1) year, nor more than five (5) years. It shall be the duty of the commission, when it shall have knowledge that any person is engaging in business as a distributor without a valid permit to proceed by injunction or otherwise, to prevent the continuance of said business as a distributor of lubricating oil, and any judge or chancellor now authorized to grant injunctions, shall grant an injunction enjoining the continuance of said business for not less than one (1) year nor more than five (5) years.

SOURCES: Codes, 1942, § 10078-04; Laws, 1969 Ex Sess, ch. 56, § 4; Laws, 1972, ch. 479, § 3; Laws, 1981, ch. 468, § 29, eff from and after July 1, 1981.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Injunctions generally, see § 11-13-1 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 88, 90, 91, 93, 95.

16 Am. Jur. Pl & Pr Forms (Rev), Forms 41 et seq (proceedings relating to suspension or revocation of license).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73 (defense of exemption in action to collect license fee).

16 Am. Jur. Pl & Pr Forms (1st ed), Licenses and Permits, Forms 21 et seq (proceedings relating to grant or refusal of license).

CJS. 53 C.J.S., Licenses §§ 82-99.

§ 27-57-11. Excise tax on lubricating oil.

Any person who is engaged in business as a Class A distributor or who acts as a Class A distributor as defined in this article, shall pay for the privilege of engaging in such business or acting as such Class A distributor, an excise tax of Two cents (2¢) per quart (Eight cents (8¢) per gallon) upon lubricating oil (1) sold to Class B distributors; (2) sold to retailers; (3) sold directly to a consumer; (4) used in any motor vehicle owned or operated by such person in this state.

Provided that the tax herein imposed and assessed shall be collected and paid to the State of Mississippi but once in respect to any lubricating oil.

Provided that any person or concern who holds a permit as a distributor of lubricating oil, issued under prior law, who applies for and receives a permit as a Class B distributor, as defined in this article, shall upon the issuance of such Class B distributor's permit take an actual physical inventory of all lubricating oil on hand. A tax, at the rate provided above, shall immediately accrue upon the amount of lubricating oil on hand and shall be payable to the comptroller on or before the twentieth of the month following the month in which such inventory is made. All such inventories shall be made under the supervision of a representative of the comptroller. After the issuance of Class B permits, holders thereof shall be required to pay the tax, provided for in this section, to Class A distributors on all lubricating oil purchased or otherwise acquired.

SOURCES: Codes, 1942, § 10078-05; Laws, 1969 Ex Sess, ch. 56, § 5; Laws, 1972, ch. 479, § 4, eff from and after July 1, 1972.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 524 et seq.

§ 27-57-13. Monthly report and remittance.

(1) For the purpose of determining the amount of his liability for the tax imposed herein, each Class A distributor shall, not later than the twentieth day of the month next following the month in which this article becomes effective and not later than the twentieth day of each month thereafter, file with the commission a monthly report which shall include a statement of the number of gallons of lubricating oil sold by such Class A distributor within this state during the preceding calendar month and such other information as may be necessary for the proper administration of this article.

(2) At the time of filing each monthly report with the commission, each Class A distributor shall pay to the commission the full amount of the lubricating oil tax due from such Class A distributor for the preceding calendar month.

Reports and payments sent to the commission by mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be postmarked by the first working day following the due date in order to be considered timely filed.

The monthly report of the Class A distributor shall be prepared and filed with the commission on forms prescribed by the commission, or such Class A distributor may, with the approval of the commission, furnish the required information on machine-prepared schedules setting out such information as is prescribed on the forms furnished by the commission. Such monthly reports shall be signed by the Class A distributor in person or by his duly authorized agent and shall contain a declaration that the statements contained therein are true and are made under penalty of perjury.

SOURCES: Codes, 1942, § 10078-06; Laws, 1969 Ex Sess, ch. 56, § 6; Laws, 1972, ch. 479, § 5; Laws, 1981, ch. 468, § 30; Laws, 1996, ch. 306, § 5, eff from and after July 1, 1996.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1996, ch. 306, § 13, effective July 1, 1996, provides as follows:

"SECTION 13. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Crime of perjury, see § 97-9-59.

§ 27-57-15. Report from person not bonded as distributor.

Any person, other than a bonded distributor, who shall purchase, bring into this state, or otherwise acquire lubricating oil within this state on which the tax has not been paid, or covered by a distributor's bond nor otherwise exempted shall be subject with respect to such lubricating oil to all the provisions that apply to bonded distributors and be subject to additional penalties as provided in this article.

SOURCES: Codes, 1942, § 10078-07; Laws, 1969 Ex Sess, ch. 56, § 7; Laws, 1972, ch. 479, § 6, eff from and after July 1, 1972.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-57-17. Lubricating oil tax; exemptions.

(1) There shall not be included in the measure of the tax levied hereunder any lubricating oils:

(a) Sold or delivered by a Class A distributor to another Class A distributor within this state.

(b) Sold by a Class A distributor to the United States government for use of the armed forces only and delivered in quantities of not less than fifty (50) gallons.

(c) Exported to a destination beyond the borders of this state by any person, by ship, vessel, barge, railroad tank car, pipeline, or tank truck, if such tank truck is operated by a common or contract carrier.

(d) Exported to destination beyond the borders of this state by a Class A distributor.

(e) Sold in quantities of fifty (50) gallons, or more, to be used by any railroad locomotive, boat, vessel, ship, towboat, or dredgeboat.

(f) Brought into this state in the reservoir provided by the manufacturer of a vehicle as the container of oils used exclusively for lubricating said vehicle.

(2) Evidence of exempt transactions provided in this section and the subsections thereof shall consist of copies of invoices, documents or any other evidence that may be required by the commission. In order to claim exemptions provided under this article, the distributor of lubricating oil must file claims therefor within three (3) years from the date of sale or delivery; otherwise, claims for such exemptions shall be disallowed.

SOURCES: Codes, 1942, § 10078-08; Laws, 1969 Ex Sess, ch. 56, § 8; Laws, 1972, ch. 479, § 7; Laws, 1989, ch. 518, § 5, eff from and after July 1, 1989.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 518, § 9, effective from and after July 1, 1989, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Property exempt from taxation generally, see § 27-31-1 et seq.

Ad valorem tax exemption of oil, gas, and other petroleum products refined in state, see § 27-31-19.

§ 27-57-19. Lubricating oil tax; refunds.

When lubricating oil is lost or destroyed in quantities of two hundred fifty (250) gallons or more through explosion, fire, collision, storage tank wreckage, wreckage of loading or unloading facilities or other acts of Providence, only while in storage in this state or while being transported in this state, the owner of the lubricating oil shall be entitled to a refund of the tax paid thereon.

The department shall be notified by the owner of lubricating oil lost or destroyed within five (5) days after the loss or destruction is discovered. The department shall make an investigation of the facts and circumstances surrounding the loss or destruction as may be reasonably necessary for the effective administration of this section.

The claim shall be made in the name of the owner of the lubricating oil lost or destroyed, and shall be signed by the owner or his authorized agent and filed within three (3) years after the date of the loss. All claims must be accompanied by proof satisfactory to the department that the lubricating oil for which credit is claimed was destroyed as herein provided. In all cases where lubricating oil alleged to have been destroyed was covered by insurance, the department shall not approve such claim unless and until the insurer has acknowledged and actually paid the loss.

Upon the receipt of the claim, the department shall determine the amount of refund or tax credit due to the claimant and in the case of refund the amount shall be refunded to the claimant as provided in Section 27-55-19. The refund shall be paid from current lubricating oil tax collections.

If the department determines that any refund claim shall not be paid or any tax credit allowed, it shall notify the claimant at the earliest possible date after it determines the claim cannot be allowed stating the reason or reasons why the claim is rejected.

A claimant may, within sixty (60) days from the date of the rejection of his claim, appeal to the board of review as provided by law.

SOURCES: Codes, 1942, § 10078-09; Laws, 1969 Ex Sess, ch. 56, § 9; Laws, 1971, ch. 499, § 1; Laws, 1972, ch. 479, § 8; Laws, 1981, ch. 468, § 31; Laws, 1989, ch. 518, § 6; Laws, 2005, ch. 499, § 26; Laws, 2009, ch. 492, § 95, eff from and after July 1, 2010.

Editor's Note — Laws of 1989, ch. 469, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 518, § 9, effective from and after July 1, 1989, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Refunds for losses of gasoline and other motor fuels, see § 27-55-27.

Refunds for liquefied compressed gas losses, see § 27-59-35.

§ 27-57-21. Administration and enforcement.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this article, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in said sales tax law, except that in cases of conflict, then the provisions of this article shall control.

SOURCES: Codes, 1942, § 10078-10; Laws, 1969 Ex Sess, ch. 56, § 10; Laws, 1972, ch. 479, § 9; Laws, 1981, ch. 468, § 32, eff from and after July 1, 1981.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Mississippi Sales Tax Law generally, see § 27-65-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 536-537.

§ 27-57-23. Repealed.

Repealed by Laws of 1982, ch. 438, § 20, effective from and after July 1, 1982.

[Codes, 1942, § 10078-11; Laws, 1969 Ex Sess, ch. 56, § 11; Laws, 1972, ch. 479, § 10]

Editor's Note — Former § 27-57-23 related to general penalties.

§ 27-57-25. Retention of records by distributors and other persons; statute of limitations for actions by state for recovery of additional amounts.

Each distributor shall maintain and keep for a period of three (3) years a record of all lubricating oil purchased, received, procured, manufactured, refined, compounded, used, sold, stored or delivered within this state by such distributor, together with invoices, bills of lading, and other pertinent records and papers as may be reasonably required by the commission. All sales made by a distributor shall be evidenced in writing, signed by the seller, or their agents, shall bear the date of purchase, name and address of the purchaser, and the seller, and shall show the kind and quantity of the product purchased. Sales tickets and invoices made to cash shall not be considered as complying with the terms of this article.

It shall be the duty of every person purchasing lubricating oil from a distributor or other person for the purpose of sale or distribution to maintain and keep for a period of three (3) years a record of lubricating oil received together with delivery tickets, invoices, bills of lading and such other records as the commission shall require.

If, in the normal conduct of a distributor's business, the records of such distributor are maintained and kept at an office outside the State of Mississippi, it shall be a sufficient compliance with this section if the records shall be made available for audit and examination by the commission at such office located outside Mississippi. If a distributor fails or refuses to permit the commission or any of its employees to check and audit his record during the usual business hours of the day, the commission shall have authority to subpoena the records and have them brought to the office of the commission within ten (10) days after the subpoena is served on the distributor.

The commission may, after an audit and examination of the records of a distributor, authorize the disposal of such records, such authorization to be in writing by the commission after a request by the distributor.

All actions by the state for the recovery of additional amounts claimed as tax due under this article must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided, that in the case of a fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time. However, when an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified thereof either by certified mail or personal delivery of a notice by an agent of the commissioner, within the thirty-six-month examination period provided herein, the determination of the correct tax liability may be made by the commission after the expiration of said thirty-six-month examination period, provided that said determination shall be made with reasonable promptness and diligence.

SOURCES: Codes, 1942, § 10078-13; Laws, 1969 Ex Sess, ch. 56, § 13; Laws, 1981, ch. 468, § 33; Laws, 2006, ch. 344, § 3, eff from and after July 1, 2006.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-57-27. Right to inspection.

The commissioner and his agents and employees shall have full access, ingress, and egress at all reasonable hours to any place or building where lubricating oil may be received, stored, transported, sold, offered or exposed for sale, manufactured, refined, distilled, compounded, or blended. The commissioner and his agents and employees shall have the right to open and inspect any case, package, or other container, and any tank, pump, tank car or storage tank in which lubricating oil is kept and enter upon any barge, vessel, or other vehicle transporting lubricating oil and, with instruments conforming to the weights and measures adopted by the United States Bureau of Standards, check any measuring device or volume of weight of the contents of any such container.

SOURCES: Codes, 1942, § 10078-14; Laws, 1969 Ex Sess, ch. 56, § 14; Laws, 1986, ch. 395, § 3, eff from and after July 1, 1986.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — General duties of constables, see § 19-19-5.

Duties of sheriff generally, see § 19-25-67.

Weights and measures, see § 75-27-1 et seq.

Gasoline and petroleum products inspection law, see § 75-55-1 et seq.

Federal Aspects — United States Bureau of Standards generally, see 15 USCS § 271 et seq.

§ 27-57-29. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

[Codes, 1942, § 10078-15; Laws, 1969 Ex Sess, ch. 56, § 15; Laws, 1981, ch. 468, § 34, eff from and after July 1, 1981.]

Editor's Note — Former § 27-57-29 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-57-31. Commission to institute proceedings; sequestration; lien; seizure.

The commission is hereby authorized and empowered to institute legal proceedings for any and all violations of this article to recover taxes, damages or penalties due under this article. All taxes and damages recovered in any proceedings by the commission shall be paid over and disposed of as any and all other lubricating oil taxes are required to be. Any chancellor or judge authorized to grant remedial writs shall grant writs of sequestration for the impounding of lubricating oil on which the excise tax or penalties is owed.

Before any writ of sequestration shall be issued under this section, the complainant shall make an affidavit showing that he had good cause to believe, and does believe, that there is an excise tax or penalty owed the State of Mississippi on the lubricating oil sought to be sequestered; and that unless said lubricating oil is sequestered and impounded, said lubricating oil will be removed, concealed or disposed of. Upon such affidavit being presented to any chancellor or judge authorized to grant remedial writs, said chancellor or judge shall order said writ to be issued upon the filing of a bill of complaint for the collection of the excise tax on said lubricating oil. The writ of sequestration shall then be issued and the property dealt with in the manner now provided by law for other writs of sequestration. Where the State of Mississippi is the complainant, no bond shall be required of said state for the issuance of said writ of sequestration.

The State of Mississippi shall have a lien upon all of the property of every distributor or person acting as a distributor without a permit, used in the operation of his business as such distributor, for the excise taxes levied in this article and due or to become due the State of Mississippi. Such liens or encumbrances of whatever character shall be paramount to all private liens and to the rights of any holder of the legal title in or to any pumps, tanks, inventories of lubricating oil and other petroleum products, motor vehicles, or other personal property used in the operation of said business.

The commission shall have the right, when taxes due the State of Mississippi are delinquent under this article, or where any person acting as a distributor without a permit receives lubricating oil in this state without paying the tax thereon, to issue a writ of summons and seizure, returnable to the court having jurisdiction thereof, in like manner as such writs are authorized to be issued by Chapter 7 of Title 85, Mississippi Code of 1972. Said writ shall be directed to the proper officer or to any fieldman or representative of the commission commanding the officer or representative of the commission to seize the property upon which a lien exists as hereinabove provided. After the issuance of said writ, such actions and proceedings shall be had on said writ, as is presently provided for the enforcement of purchase money security interests by the statutes of this state. Provided, however, that the commission or its representative shall have the right to stop and hold any moving or movable equipment as set out in this paragraph, pending the issuance of process.

It is expressly provided that the remedies set out in the foregoing paragraphs shall be cumulative and that no action taken by the commission shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this article.

SOURCES: Codes, 1942, § 10078-16; Laws, 1969 Ex Sess, ch. 56, § 16; Laws, 1981, ch. 468, § 35, eff from and after July 1, 1981.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Tax suits by attorney general, see § 7-5-55.

Sequestration proceedings, see § 11-29-1 et seq.

Action to recover tax, penalty and interest, see § 27-35-5.

Commission as meaning Department of Revenue, see § 27-57-5.

Purchase money security interests under the Uniform Commercial Code, see §§ 75-9-103, 75-9-317, 75-9-324.

§ 27-57-33. Refund of taxes erroneously or illegally collected.

In the event that any taxes or penalties imposed by this article have been erroneously or illegally collected from a distributor or other person, the commission may, upon approval of the tax commission, permit such distributor or other person to take credit against a subsequent tax report for the amount of the erroneous overpayment, or shall certify the amount thereof may be refunded to the distributor or other person in the same manner as provided in Section 27-55-19. Provided, however, in cases where the approved claim exceeds Five Thousand Dollars ($5,000.00), the claimant may not take credit on his monthly reports for more than Five Thousand Dollars ($5,000.00) per month until such approved amount is depleted.

Such refund shall be paid to the distributor or other person forthwith.

No refunds shall be made under the provisions of this section unless a written claim is filed setting forth the circumstances by reason of which such refund should be allowed. Such claim shall be in such form as the commission shall prescribe and shall be filed with the commission within three (3) years from the date of payment of the taxes erroneously or illegally collected.

Nothing in this article shall be construed to prohibit a refund or credit for tax paid on lubricating oil not subject to tax or which is exempt from tax, provided there has not been a wilful disregard of the provisions of this article and provided, further, that the claim therefor is filed within three (3) years.

SOURCES: Codes, 1942, § 10078-17; Laws, 1969 Ex Sess, ch. 56, § 17; Laws, 1971, ch. 499, § 2; Laws, 1972, ch. 479, § 11; Laws, 1981, ch. 468, § 36, eff from and after July 1, 1981.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Tax commission as meaning the Department of Revenue, see § 27-3-4.

Refund of taxes generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 538.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 383 (complaint, petition, or declaration against corporation to recover sums erroneously refunded as overpayments of excise taxes); Form 411(claim for refund of excise tax).

CJS. 84 C.J.S., Taxation §§ 1049 et seq.

§ 27-57-35. Funds placed in depositories.

All funds collected by the commission under provisions of this article, or under the provisions of any other law, which may now or in the future be collected by said commission, are hereby designated as public funds of the State of Mississippi and shall be by it deposited in accordance with Section 27-3-57.

SOURCES: Codes, 1942, § 10078-18; Laws, 1969 Ex Sess, ch. 56, § 18; Laws, 1979, ch. 417, § 5; Laws, 1981, ch. 468, § 37, eff from and after July 1, 1981.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Apportionment of excise taxes on gasoline and petroleum products, see § 27-5-101.

State depositories, see § 27-105-1 et seq.

§ 27-57-37. Deposit of tax receipts.

Except as otherwise provided in Section 31-17-127, the amount received from lubricating oil excise tax, as defined in this article, shall be deposited by the commission, in the State Treasury to the credit of the State Highway Fund, and until the date specified in Section 65-39-35, such amount shall be used for the construction or reconstruction of highways designated under the highway program created under Section 65-3-97.

SOURCES: Codes, 1942, § 10078-19; Laws, 1969 Ex Sess, ch. 56, § 19; Laws, 1985, ch. 537, § 3; Laws, 1987, ch. 322, § 13; Laws, 1994, ch. 557, § 20; Laws, 1999, ch. 575, § 6; Laws, 2002, ch. 582, § 6, eff from and after July 1, 2002.

Editor's Note — Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

See Section 65-39-35 for events which must occur for reductions in certain taxes and rates to take effect.

Cross References — Apportionment of excise taxes on gasoline and petroleum products, see § 27-5-101.

Authorization for borrowing to cover costs of construction or reconstruction of highways designated under § 65-3-97, when revenues designated under §§ 27-5-101, 27-19-99, 27-19-325, 27-57-37, 27-65-75, and 65-3-97 are insufficient to fund construction priorities under Four-Lane Highway Program, see § 31-17-127.

State Highway Fund, see § 65-11-35.

§ 27-57-39. Exchange of information with other states.

The commission may, provide any department or agency of any state or the United States that is responsible for the enforcement of lubricating oil taxes any information it may have relative to the manufacture, receipt, sale, use, transportation and/or shipment of lubricating oil by any person. The commission may provide any department or agency of any state or the United States that is responsible for the enforcement of lubricating oil taxes any demographic information it may have relative to distributors of lubricating oil. The commission may place such information in a national database or clearinghouse in order to facilitate the exchange of such information.

SOURCES: Codes, 1942, § 10078-20; Laws, 1969 Ex Sess, ch. 56, § 20; Laws, 2001, ch. 390, § 3, eff from and after passage (approved Mar. 11, 2001.)

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-57-41. Evidence of product transported; inspections.

Every person hauling, transporting, or conveying more than six (6) gallons of lubricating oil, upon which tax has not been paid, over the highways, streets, alleys or waters of this state, or into this state over any highway, street, alley or water route, shall, during the entire time he is so engaged, have in his possession a bill of sale, bill of lading, invoice, or other written evidence showing the kind and amount of lubricating oil being transported, the name and address of the person from whom said lubricating oil was received, and the name and address of the person to whom delivery is to be made. Likewise, the vehicle or boat conveying such lubricating oil shall have on it the name and address of the person or company transporting such lubricating oil clearly printed on both sides of the vehicle or boat in well-balanced letters of not less than two (2) inches in height on a contrasting background.

Any bonded, qualified distributor transporting lubricating oil from his place of business in this state for delivery to his agent or customer shall not be required to have in his possession while so transporting such lubricating oil the bill of sale, invoice, or other written evidence required by this section, but must conform in all other particulars with this section.

The comptroller, in person, or by any of his employees, any sheriff, deputy sheriff, constable, or police officer of this state, is hereby authorized to inspect any vehicle or boat transporting lubricating oil over the highways, streets, alleys or waters of this state, to examine the contents thereof, to take samples of any lubricating oil contained in said vehicle or boat, said sample not to exceed one quart, and to demand for inspection the production of the invoice, or other records pertaining to the lubricating oil being transported in such vehicle or boat.

SOURCES: Codes, 1942, § 10078-21; Laws, 1969 Ex Sess, ch. 56, § 21, eff from and after January 1, 1970.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the

executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-57-43. Authority to make rules and regulations.

The comptroller is hereby given power and authority to make all rules and regulations, not inconsistent with the provisions of this article, with reference to all petroleum excise tax provisions and exemptions governing the making of reports and contents of same and doing any and all other duties pertaining to the making of reports and payment of taxes, and such other matters as will, in the judgment of the comptroller, contribute to a more efficient administration of all the petroleum excise tax provisions of this article. Such rules and regulations, when made, shall have the same binding force and effect as if incorporated in this article.

SOURCES: Codes, 1942, § 10078-24; Laws, 1969 Ex Sess, ch. 56, § 24, eff from and after January 1, 1970.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-57-45. Effect of prior law.

This article shall not release or relinquish any liability or penalty incurred or right accrued under the provisions of Chapter 588, Laws of 1966, as they existed before January 1, 1970, and such provisions shall be considered as remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of any such liability, penalty or right. Such provisions shall govern the reporting and payment of taxes on lubricating oil received, sold, distributed or used by bonded distributors or other persons before January 1, 1970. Any and all matters, orders, hearings, and proceedings pending before the comptroller or before any court under provisions of such prior law shall continue with the same effect as though such prior provisions were not amended or repealed.

SOURCES: Codes, 1942, § 10078-22; Laws, 1969 Ex Sess, ch. 56, § 22, eff from and after January 1, 1970.

ARTICLE 3.

OTHER OILS
[REPEALED].

Editor's Note — Laws of 1999, ch. 461, § 49, provided for the repeal of the remaining sections of this article, pertaining to the taxation of other oils. For present similar provisions, see § 27-55-501 et seq.

§§ 27-57-301 through 27-57-309. Repealed.

Repealed by Laws of 1999, ch. 461, § 49, effective from and after July 1, 1999.

§ 27-57-301. [Codes, 1942, § 10078-101; Laws, 1969 Ex Sess, ch. 57, § 1; Laws, 1981, ch. 468, § 38, eff from and after July 1, 1981]

§ 27-57-303. [Codes, 1942, § 10078-120; Laws, 1969 Ex Sess, ch. 57, § 20, eff from and after January 1, 1970]

§ 27-57-305. [Codes, 1942, § 10078-102; Laws, 1969 Ex Sess, ch. 57, § 2; Laws, 1974, ch. 472, § 1; Laws, 1982, chs. 410, § 1; 438, § 7; Laws, 1992, ch. 413, § 1; Laws, 1996, ch. 306, § 6; Laws, 1998, ch. 457, § 5, eff from and after passage (approved March 23, 1998)]

§ 27-57-307. [Codes, 1942, § 10078-103; Laws, 1969 Ex Sess, ch. 57, § 3; Laws, 1981, ch. 468, § 39, eff from and after July 1, 1981]

§ 27-57-309. [Codes, 1942, § 10078-104; Laws, 1969 Ex Sess, ch. 57, § 4; Laws, 1981, ch. 468, § 40, eff from and after July 1, 1981]

Editor's Note — Former § 27-57-301 related to administration of article. For present previsions see § 27-55-501.

Former § 27-57-303 related to purpose of article. For present provisions, see § 27-55-503.

Former § 27-57-305 related to definitions. For present provisions, see § 27-55-505.

Former § 27-57-307 related to distributor permit; application; bond. For present provisions, see § 27-55-507.

Former § 27-57-309 related to distributor permit; revocation; injunction. For present provisions, see § 27-55-511.

Cross References — Special Fuel Tax, see § 27-55-501 et seq.

§ 27-57-311. Repealed.

Repealed by Laws of 1995, ch. 364, § 6, effective from and after July 1, 1995.

[Codes, 1942, § 10078-105; Laws, 1969 Ex Sess, ch. 57, § 5; Laws, 1974, ch. 472, § 2; Laws, 1981, ch. 468, § 41; Laws, 1982, ch. 438, § 8]

Editor's Note — Former § 27-57-311 pertained to aviation oil dealers.

Laws of 1995, ch. 364, § 7, effective July 1, 1995, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 63 [Repealed], Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the aforesaid laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§§ 27-57-313 through 27-57-319. Repealed.

Repealed by Laws of 1999, ch. 461, § 49, effective from and after July 1, 1999.

§ 27-57-313. [Codes, 1942, § 10078-106; Laws, 1969 Ex Sess, ch. 57, § 6; Laws, 1982, ch. 438, § 9, eff from and after July 1, 1982]

§ 27-57-315. [Codes, 1942, § 10078-107; Laws, 1969 Ex Sess, ch. 57, § 7; Laws, 1970, ch. 275, § 1; Laws, 1974, ch. 479; Laws, 1981, ch. 468, § 42; Laws, 1982, chs. 410, § 2; 438, § 10; Laws, 1987, ch. 322, § 14; Laws, 1995, ch. 364, § 3, eff from and after July 1, 1995]

§ 27-57-317. [Codes, 1942, § 10078-108; Laws, 1969 Ex Sess, ch. 57, § 8; Laws, 1981, ch. 468, § 43; Laws, 1996, ch. 306, § 7; Laws, 1998, ch. 457, § 6, eff from and after passage (approved March 23, 1998)]

§ 27-57-319. [Codes, 1942, § 10078-109; Laws, 1969 Ex Sess, ch. 57, § 9, eff from and after January 1, 1970]

Editor's Note — Former § 27-57-313 related to marine diesel fuel or kerosene permit. For present provisions, see § 27-55-515.

Former § 27-57-315 related to excise tax on oil. For present provisions, see § 27-55-523.

Former § 27-57-317 related to monthly report and remittance. For present provisions, see § 27-55-523.

Former § 27-57-319 related to report from person not bonded as a distributor of oil. For present provisions, see § 27-55-525.

§ 27-57-321. Repealed.

Repealed by Laws of 1982, ch. 438, § 21, effective from and after July 1, 1982.

[Codes, 1942, § 10078-110; Laws, 1969 Ex Sess, ch. 57, § 10; Laws, 1981, ch. 468, § 44]

Editor's Note — Former § 27-57-321 related to report from aviation oil dealer.

§ 27-57-323. Repealed.

Repealed by Laws of 1982, chs. 410, § 19; 438, § 21, effective from and after July 1, 1982.

[Codes, 1942, § 10078-111; Laws, 1969 Ex Sess, ch. 57, § 11; Laws, 1980, ch. 561, § 18]

Editor's Note — Former § 27-57-323 related to reports by persons storing liquefied compressed gas in underground caverns.

Laws of 1982, ch. 410, § 19, effective from and after July 1, 1982 (approved March 25, 1982), repealed this section. Subsequently, ch. 438, § 21, effective from and after July 1, 1982 (approved April 5, 1982), also repealed this section.

§ 27-57-325. Repealed.

Repealed by Laws of 1982, ch. 438, § 21, effective from and after July 1, 1982.

[Codes, 1942, § 10078-112; Laws, 1969 Ex Sess, ch. 57, § 12]

Editor's Note — Former § 27-57-325 provided for the comptroller to determine the amount of oil received.

§§ 27-57-327 through 27-57-334. Repealed.

Repealed by Laws of 1999, ch. 461, § 49, effective from and after July 1, 1999.

§ 27-57-327. [Codes, 1942, § 10078-113; Laws, 1969 Ex Sess, ch. 57, § 13; Laws, 1970, ch. 550, § 1; Laws, 1974, ch. 472, § 3; Laws, 1981, ch. 468, § 45; Laws, 1982, ch. 410, § 3; Laws, 1989, ch. 462, § 14; Laws, 1996, ch. 306, § 8, eff from and after July 1, 1996]

§ 27-57-329. [Codes, 1942, § 10078-114; Laws, 1969 Ex Sess, ch. 57, § 14; Laws 1974, ch. 472, § 4; Laws, 1979, ch. 354; Laws, 1982, ch. 438, § 11; Laws, 1991, ch. 384, § 4; Laws, 1995, ch. 364, § 4; Laws, 1996, ch. 306, § 9, eff from and after July 1, 1996]

§ 27-57-331. [Codes, 1942, § 10078-115; Laws, 1969 Ex Sess, ch. 57, § 15; Laws, 1974, ch. 472, § 5; Laws, 1981, ch. 46; Laws, 1989, ch. 518, § 7, eff from and after July 1, 1989]

§ 27-57-333. [Codes, 1942, § 10078-116; Laws, 1969 Ex Sess, ch. 57, § 16; Laws, 1981, ch. 468, § 47, eff from and after July 1, 1981]

§ 27-57-334. [Laws, 1995, ch. 364, § 5, eff from and after July 1, 1995]

Editor's Note — Former § 27-57-327 related to exemptions and allowances. For present provisions, see § 27-55-527.

Former § 27-57-329 related to marking requirements for diesel fuel or kerosene used for nonhighway purposes; liability for tax; invoices.

Former § 27-57-331 related to oil tax; refunds. For present provisions, see § 27-55-535.

Former § 27-57-333 related to administration and enforcement. For present provisions, see § 27-55-537.

Former § 27-57-334 related to use of dyed diesel fuel in motor vehicle. For present provisions, see § 27-55-539.

§ 27-57-335. Repealed.

Repealed by Laws of 1982, ch. 438, § 21, effective from and after July 1, 1982.

[Codes, 1942, § 10078-117; Laws, 1969 Ex Sess, ch. 57, § 17; Laws, 1974, ch. 472, § 6]

Editor's Note — Former § 27-57-335 related to general penalties.

§§ 27-57-337 through 27-57-353. Repealed.

Repealed by Laws of 1999, ch. 461, § 49, effective from and after July 1, 1999.

§ 27-57-337. [Codes, 1942, § 10078-118; Laws, 1969 Ex Sess, ch. 57, § 18; Laws, 1989, ch. 397, § 2, eff from and after July 1, 1989]

§ 27-57-339. [Codes, 1942, § 10078-119; Laws, 1969 Ex Sess, ch. 57, § 19, eff from and after January 1, 1970]

§ 27-57-341. [Codes, 1942, § 10078-121; Laws, 1969 Ex Sess, ch. 57, § 21; Laws, 1981, ch. 468, § 48; Laws, 1982, ch. 438, § 12, eff from and after July 1, 1982]

§ 27-57-343. [Codes, 1942, § 10078-122; Laws, 1969 Ex Sess, ch. 57, § 22; Laws, 1986, ch. 395, § 4, eff from and after July 1, 1986]

§ 27-57-345. [Codes, 1942, § 10078-123; Laws, 1969 Ex Sess, ch. 57, § 23; Laws, 1981, ch. 468, § 49, eff from and after July 1, 1981]

§ 27-57-347. [Codes, 1942, § 10078-124; Laws, 1969 Ex Sess, ch. 57, § 24; Laws, 1981, ch. 468, § 50, eff from and after July 1, 1981]

§ 27-57-349. [Codes, 1942, § 10078-125; Laws, 1969 Ex Sess, ch. 57, § 25; Laws, 1974, ch. 472, § 7; Laws, 1981, ch. 468, § 51, eff from and after July 1, 1981]

§ 27-57-351. [Codes, 1942, § 10078-126; Laws, 1969 Ex Sess, ch. 57, § 26; Laws, 1979, ch. 417, § 6; Laws, 1981, ch. 468, § 52; Laws, 1984, ch. 478, § 21, eff from and after July 1, 1984]

§ 27-57-353. [Codes, 1942, § 10078-127; Laws, 1969 Ex Sess, ch. 57, § 27, eff from and after January 1, 1970]

Editor's Note — Former § 27-57-337 related to transportation reports; seals of vessels, etc. For present provisions, see § 27-55-541.

Former § 27-57-339 related to metering requirements. For present provisions, see § 27-55-543.

Former § 27-57-341 related to retention of records by distributors and others; dual user's records; statute of limitations for actions by state for recovery of additional amounts. For present provisions, see § 27-55-545.

Former § 27-57-343 related to right to inspection. For present provisions, see § 27-55-547.

Former § 27-57-345 related to appeal from acts and orders of commission.

Former § 27-57-347 related to commission to institute proceedings; sequestration; lien; seizure. For present provisions, see § 27-55-551.

Former § 27-57-349 related to refund of taxes erroneously or illegally collected. For present provisions, see § 27-55-553.

Former § 27-57-351 related to funds placed in depositories. For present provisions, see § 27-55-555.

Former § 27-57-353 related to exchange of information with other states. For present provisions, see § 27-55-557.

§ 27-57-355. Repealed.

Repealed by Laws of 1989, ch. 397, § 3, effective from and after July 1, 1989.

[Codes, 1942, § 10078-128; Laws, 1969 Ex Sess, ch. 57, § 28; Laws, 1974, ch. 472, § 8]

Editor's Note — Former § 27-57-355 related to license and bond of motor fuel carriers.

Laws of 1989, ch. 397, § 4, effective July 1, 1989, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55 and 57, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and the imposition of any such penalties, forfeitures or claims for failure to comply therewith."

§ 27-57-357. Repealed.

Repealed by Laws of 1999, ch. 461, § 49, effective from and after July 1, 1999.

[Codes, 1942, § 10078-129; Laws, 1969 Ex Sess, ch. 57, § 29; Laws, 1995, ch. 364, § 2, eff from and after July 1, 1995]

Editor's Note — Former § 27-57-357 related to evidence of product transported; notice of intention to import oil; penalties. For present provisions, see § 27-55-559.

§ 27-57-359. Repealed.

Repealed by Laws of 1982, ch. 438, § 21, effective from and after July 1, 1982.

[Codes, 1942, § 10078-130; Laws, 1969 Ex Sess, ch. 57, § 30]

Editor's Note — Former § 27-57-359 related to gauging capacity of tank trucks.

§§ 27-57-361 and 27-57-363. Repealed.

Repealed by Laws of 1999, ch. 461, § 49, effective from and after July 1, 1999.

§ 27-57-361. [Codes, 1942, § 10078-131; Laws, 1969 Ex Sess, ch. 57, § 31, eff from and after January 1, 1970]

§ 27-57-363. [Codes, 1942, § 10078-132; Laws, 1969 Ex Sess, ch. 57, § 32, eff from and after January 1, 1970]

Editor's Note — Former § 27-57-361 related to stop at inspection stations.

Former § 27-57-363 related to wartime provisions.

§ 27-57-365. Repealed.

Repealed by Laws of 1981, ch. 468, § 74, effective from and after July 1, 1981.

[Codes, 1942, § 10078-135; Laws, 1969 Ex Sess, ch. 57, § 35]

Editor's Note — Former § 27-57-365 related to deposit of funds paid to comptroller.

§§ 27-57-367 through 27-57-371. Repealed.

Repealed by Laws of 1999, ch. 461, § 49, effective from and after July 1, 1999.

§ 27-57-367. [Codes, 1942, § 10078-136; Laws, 1969 Ex Sess, ch. 57, § 36; Laws, 1987, ch. 322, § 15, eff from and after July 1, 1987 (Governor's veto overridden by Legislature on March 12, 1987)]

§ 27-57-369. [Codes, 1942, § 10078-137; Laws, 1969 Ex Sess, ch. 57, § 37, eff from and after January 1, 1970]

§ 27-57-371. [Codes, 1942, § 10078-133; Laws, 1969 Ex Sess, ch. 57, § 33, eff from and after January 1, 1970]

Editor's Note — Former § 27-57-367 related to apportionment of tax. For present provisions, see § 27-55-561.

Former § 27-57-369 related to authority to make rules and regulations. For present provisions, see § 27-55-563.

Former § 27-57-371 related to effect of prior law. For present provisions, see § 27-55-565.

CHAPTER 59

Liquefied Compressed Gas Tax

Article 1. General Provisions 27-59-1
Article 3. User Tax 27-59-301

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
27-59-1. Administration of chapter.
27-59-3. Definitions.
27-59-5. Repealed.
27-59-7. Distributor permit; application; bond.
27-59-9. Distributor permit; revocation; injunction.
27-59-11. Levy of tax.
27-59-12. Exemptions.
27-59-13. Monthly report and remittance.
27-59-15. Repealed.
27-59-17. Power of motor vehicle comptroller to cancel permits.
27-59-19. Repealed.
27-59-21. Repealed.
27-59-23. Noncompliance punishable by injunction against doing business.
27-59-25. Retention of records by distributors and other persons; statute of limitations for actions by state to recover additional amounts.
27-59-27. Repealed.
27-59-29. Compressed gas user's decal for motor vehicles; fee; classifications.
27-59-31. Penalty for operating without compressed gas user's decal.
27-59-33. Annual reports of Class II and Class III users.
27-59-35. Refunds.
27-59-37. Administration and enforcement.
27-59-39. Exemptions.
27-59-41. Right to inspection.
27-59-43. Repealed
27-59-45. Commission to institute proceedings; sequestration; lien; seizure.
27-59-47. Refund of taxes erroneously or illegally collected.
27-59-49. Apportionment of proceeds of tax.
27-59-51. Funds placed in depositories.
27-59-53. Exchange of information with other states.
27-59-55. Repealed.
27-59-57. Authority to make rules and regulations.
27-59-59. Effect of prior law.

§ 27-59-1. Administration of chapter.

The Department of Revenue, hereinafter called the "commission" or the "department," is hereby vested with the sole power and authority, and is charged with the duty of administering and enforcing the terms and provisions of this chapter.

SOURCES: Codes, 1942, § 10079-01; Laws, 1969 Ex Sess, ch. 55, § 1; Laws, 1980, ch. 561, § 19; Laws, 1981, ch. 468, § 53; Laws, 2009, ch. 492, § 96, eff from and after July 1, 2010.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Gasoline taxes, see § 27-55-1 et seq.

Tax on lubricating oil, see § 27-57-1 et seq.

Interstate commercial carriers motor fuel tax, see § 27-61-1 et seq.

Mississippi Transportation Commission to provide weight enforcement field personnel to assess and collect taxes, fees, and penalties and perform duties required by this article, see § 65-1-8.

Unlawful trusts and combines with respect to sales of liquefied petroleum gases or liquefied petroleum gas appliances, see § 75-57-63.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 524 et seq.

§ 27-59-3. Definitions.

The words, terms and phrases as used in this chapter shall have the following meanings unless the context requires otherwise:

(a) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) "Highway" means and includes every way or place, of whatever nature, including public roads, toll roads, streets, and alleys of the state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, and notwithstanding that they may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair. Provided further, that the confines of a highway shall include the entire width and length of the right-of-way.

(c) "Motor vehicle" means every vehicle licensed for highway use by which any person or property is transported or drawn upon the highways of this state and which is self-propelled.

(d) "Liquefied compressed gas" means gases derived from petroleum or natural gas which are in the gaseous state at normal atmospheric temperature and pressure, but which may be maintained in the liquid state at normal atmospheric temperature by suitable pressure. The term shall be deemed to mean and include methane, ethane, propane, ethylene, propylene, butylene, butane, isobutane, and any and all liquid flammable materials derived from petroleum or natural gas having a vapor pressure exceeding forty (40) pounds per square inch, absolute, at one hundred (100) degrees F. Normal storage of these gases is a liquid under pressure.

(e) "Compressed natural gas" and "liquefied natural gas" mean natural gas after it has been compressed or liquefied for use as a fuel in a motor vehicle and shall not include natural gas prior to such final compression or liquefication.

(f) "Compressed gas" means "liquefied compressed gas," "liquefied natural gas," "compressed natural gas" and any other liquefied or compressed gas that is used or is usable as fuel in a motor vehicle.

(g) "Use" means, in addition to its original meaning, the receipt of compressed gas by any person into the fuel supply tank of a motor vehicle or into a receptacle from which compressed gas is supplied by any person to his own or other motor vehicles.

(h) "Terminal" means a tank farm within this state with the minimum storage capacity for the receipt of a full barge delivery or common carrier pipeline delivery of compressed gas.

(i) "Refiner" or "processor" means every person who shall produce, manufacture, refine, distill, compress or liquefy compressed gas in this state.

(j) "Public utility" means a person engaged in the distribution of natural gas whose rates are subject to regulation by the Public Service Commission of the State of Mississippi.

(k) "Distributor" means any person who sells or delivers compressed gas for use in the operation of a motor vehicle or motor vehicles on the highways of this state and any person who shall import, receive, purchase, acquire, manufacture, refine, use, store or sell any compressed gas in this state, on which the excise taxes hereinafter levied by this chapter have not been paid or the payment of which is not covered by the bond of a qualified

Mississippi distributor of compressed gas. All "refiners" and "processors" shall qualify as distributors of compressed gas. All persons operating marine or pipeline terminals and all persons operating underground storage facilities exclusive of those storing natural gas shall qualify as distributors of compressed gas. No person may qualify as a distributor for the sole purpose of using compressed gas as a fuel to propel a motor vehicle or motor vehicles owned by him on the highways of this state.

(*l*) "User" means any person who uses compressed gas to propel a motor vehicle over the highways of this state.

(m) "Commission" or "department" means the Department of Revenue of the State of Mississippi, either acting directly or through its duly authorized officers, agents and employees.

(n) "United States government" means and includes all purchasing officers of the Armed Forces of the United States and the United States Property and Fiscal Officer for the State of Mississippi or any other state, appointed pursuant to Section 708, Title 32, United States Code, when purchasing compressed gas with federal funds for the account of and use by a component of the Armed Forces as defined herein.

(o) "Armed Forces" means and includes all components of the Armed Forces of the United States, including the Army National Guard, the Army National Guard of the United States, the Air National Guard and the Air National Guard of the United States, as those terms are defined in Section 101, Title 10, United States Code, and any other reserve component of the Armed Forces of the United States enumerated in Section 261, Title 10, United States Code.

(p) "Diesel gallon equivalent" means six and six one-hundredths (6.06) pounds of liquefied natural gas. Provided, however, that should the National Conference on Weights and Measures subsequent to July 1, 2015, adopt a diesel gallon equivalent definition different than six and six one-hundredths (6.06) pounds of liquefied natural gas, the term "diesel gallon equivalent" shall mean and have the same definition as the National Conference on Weights and Measures definition.

SOURCES: Codes, 1942, § 10079-02; Laws, 1969 Ex Sess, ch. 55, § 2; Laws, 1982, ch. 410, § 4; Laws, 2009, ch. 492, § 97; Laws, 2014, ch. 467, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (p), by substituting "pounds of liquefied gas" for "pounds for liquefied gas" the second time it appears. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 27-59-5. Repealed.

Repealed by Laws of 1982, ch. 410, § 20, effective from and after July 1, 1982.

[Codes, 1942, § 10079-03; Laws, 1969 Ex Sess, ch. 55, § 3]

Editor's Note — Former § 27-59-5 related to requirements of permits.

§ 27-59-7. Distributor permit; application; bond.

Before any person shall engage in business as a distributor of compressed gas, he shall first make application to the commission, upon forms prescribed by the commission, for a permit to engage in said business.

If said application is approved, the commission may require said applicant to enter into a good and sufficient surety bond, written by a company qualified to write such bonds in the State of Mississippi, which bond shall be made payable to the State of Mississippi, in a sum not less than One Thousand Dollars ($1,000.00) nor more than Twenty-five Thousand Dollars ($25,000.00); or in lieu thereof, deposit with the commission a cash bond in the aforesaid amount. A personal bond in the aforesaid amounts shall also be acceptable if the same is secured by the bonds of the State of Mississippi or the United States government. Such bond or bonds shall be in an amount not to exceed Twenty-five Thousand Dollars ($25,000.00), and not to exceed the compressed gas taxes estimated to become due by the said distributor for any ninety-day period. The bond herein required shall be increased within the limits hereinbefore set forth from time to time if deemed insufficient by the commission, giving to the distributor fifteen (15) days' notice, in writing, to increase said bond, said notice to state the amount of increase demanded.

Said bond shall be conditioned that the distributor will fully comply with all laws pertaining to distributors of compressed gas as regulated by this chapter and to pay the compressed gas taxes and penalties provided. Provided, however, that any person who has already furnished bond under a prior petroleum tax law or shall furnish a bond to meet the requirements of any petroleum tax law administered by the commission shall not be required to furnish an additional bond, but said person shall be subject to all other conditions, requirements and liabilities imposed herein upon a distributor of compressed gas.

Before any public utility sells or delivers natural gas for use as a fuel in a motor vehicle to a user, as defined herein, the public utility shall notify, in writing, the commission of its intention to engage in such activity.

A public utility who sells or delivers natural gas to a user, as defined herein, shall be subject to the same requirements and penalties as distributors of compressed gas except that the public utility shall not be required to comply with Section 75-57-49.

SOURCES: Codes, 1942, § 10079-04; Laws, 1969 Ex Sess, ch. 55, § 4; Laws, 1981, ch. 468, § 54; Laws, 1982, ch. 410, § 5, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Liquefied compressed gas dealers' permits, bonds and insurance generally, see § 75-57-49.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 80, 81, 85.

8B Am. Jur. Legal Forms 2d, Garages, Service Stations, and Parking Facilities, § 128:15 (bond of gasoline distributor).

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 27-59-9. Distributor permit; revocation; injunction.

If the commission approves the application and bond, it shall issue a permit authorizing said applicant to engage in business as a distributor and said permit shall not be assignable or otherwise transferable, provided, however, that no such permit shall be issued unless the applicant has complied with the provisions of Section 75-57-49, Mississippi Code of 1972. Said permit may be revoked for a single business location or any such locations by the commission at any time upon ten (10) days' written notice, if said distributor shall fail to pay the compressed gas taxes and penalties due within the time provided by law, or shall fail in any way to comply with all the provisions of this chapter, but such cancellation shall not relieve the distributor or his sureties from liability on the distributor's bond. No permit shall be issued any applicant who is in arrears, or default to the state or any subdivision thereof for any taxes.

Any person engaging in the business of a distributor without a permit having first been obtained as provided herein, or after any permit granted a distributor has been revoked, shall forfeit all right to do business as a distributor in the State of Mississippi for a period of not less than one (1) year, nor more than five (5) years. It shall be the duty of the commission, when it shall have knowledge, that any person is engaging in business as a distributor without a valid permit, to proceed by injunction or otherwise to prevent the continuance of said business of distributor of compressed gas, and any judge or chancellor, now authorized to grant injunctions, shall grant an injunction enjoining the continuance of said business for not less than one (1) year nor more than five (5) years.

SOURCES: Codes, 1942, § 10079-05; Laws, 1969 Ex Sess, ch. 55, § 5; Laws, 1981, ch. 468, § 55; Laws, 1982, ch. 410, § 6, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the

executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows: "SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Injunctions generally, see §§ 11-13-1 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 88, 90, 91, 93, 95.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq (proceedings relating to suspension or revocation of license).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73 (defense of exemption in action to collect license fee).

CJS. 53 C.J.S., Licenses §§ 82-99.

§ 27-59-11. Levy of tax.

(1) A tax at the rate of One-fourth Cent (¼¢) per gallon is hereby levied upon any person engaged in business as a distributor of compressed gas, excepting natural gas, for the privilege of engaging in such business or acting as such distributor. The tax shall be based on all compressed gas, excepting natural gas, stored, used, distributed, manufactured, refined, distilled, blended or compounded in this state or received in this state for sale, storage, distribution or for any other purpose.

The tax levied herein shall become due and payable when:

(a) Compressed gas is withdrawn from storage at a refinery, marine or pipeline terminal, or underground caverns or cavities except when withdrawal is by pipeline or barge;

(b) Compressed gas imported by a common carrier is unloaded by that carrier unless the compressed gas is unloaded directly into an underground cavern or cavity for storage or directly into the storage tanks of a refinery, marine or pipeline terminal; or

(c) Compressed gas imported by any person, other than a common carrier, enters the State of Mississippi, unless the compressed gas is unloaded directly into an underground cavern or cavity for storage or directly into the storage tanks of a refinery, marine or pipeline terminal.

(2)(a) A tax at the rate of Seventeen Cents (17¢) per gallon until the date specified in Section 65-39-35, and Thirteen and Four-tenths Cents (13.4¢) per gallon thereafter, is levied upon any distributor of compressed gas for the privilege of engaging in the business of selling or delivering compressed gas, excepting compressed natural gas and liquefied natural gas, for use in a motor vehicle or motor vehicles on the highways of this state.

(b) A tax at the rate of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, is levied upon any distributor of compressed gas for the privilege of engaging in the business of selling or delivering compressed natural gas for use in a motor vehicle or motor vehicles on the highways of this state.

(c) A tax at the rate of Eighteen Cents (18¢) per diesel gallon equivalent until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per diesel gallon equivalent thereafter, is levied upon any distributor of liquefied natural gas for the privilege of engaging in the business of selling or delivering liquefied natural gas for use in a motor vehicle or motor vehicles on the highways of this state.

(d) A tax at the rate of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, is levied upon any public utility for the privilege of engaging in the business of selling or delivering natural gas to a user for the purpose of being used as a fuel in a motor vehicle or motor vehicles on the highways of this state, and the taxes shall be collected from the user whenever practical.

(e) The taxes levied in this subsection shall not apply when sales or deliveries are made to persons who are holders of permitted compressed gas user's decals.

(3) Upon every person operating on the highways of this state a motor vehicle or motor vehicles using or capable of using any compressed gas, except liquefied natural gas, as a motor fuel and having a gross license tag weight classification of ten thousand (10,000) pounds or less, there is hereby levied an annual privilege tax of One Hundred Ninety-five Dollars ($195.00) until the date specified in Section 65-39-35, and One Hundred Sixty-five Dollars ($165.00) thereafter.

(4)(a) Upon every person operating on the highways of this state a motor vehicle or motor vehicles using or capable of using compressed gas and having a gross license tag weight classification greater than ten thousand (10,000) pounds, there is hereby levied:

(i) A privilege tax of Seventeen Cents (17¢) per gallon until the date specified in Section 65-39-35, and Thirteen and Four-tenths Cents (13.4¢) per gallon thereafter, on all compressed gas, excepting compressed natural gas and liquefied natural gas, used on the highways of this state;

(ii) A privilege tax of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, on all compressed natural gas used on the highways of this state; and

(iii) A privilege tax of Eighteen Cents (18¢) per diesel gallon equivalent until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per diesel gallon equivalent thereafter, on all liquefied natural gas used on the highways of this state.

(b) The taxes levied in this subsection shall not apply to owners or operators classified by the department as nonpermitted users.

(5) All owners and operators of motor vehicles that have a gross license tag weight classification greater than ten thousand (10,000) pounds, but not exceeding twenty thousand (20,000) pounds shall prepay Two Hundred Twenty-five Dollars ($225.00) of the tax annually, and all owners and operators of motor vehicles that have a gross license tag weight classification greater than twenty thousand (20,000) pounds shall prepay Three Hundred Dollars ($300.00) of the tax annually. On motor vehicles that have a gross license tag weight exceeding ten thousand (10,000) pounds, that are exclusively used by a farmer for transporting farm products produced on his own farm and also farm supplies, materials and equipment used in the growing or production of his agricultural products and have a "farm" or "F" motor vehicle license tag, the prepaid portion of the privilege tax shall be One Hundred Fifty Dollars ($150.00).

(6) The department, in its discretion, may authorize or require the owner or operator of five (5) or more motor vehicles that use or are capable of using compressed gas on the highway to pay the excise tax on all compressed gas purchased for any purpose and the excise tax shall be collected by the distributor of compressed gas at the time of sale or delivery. The owners or operators authorized or required to do so shall be classified as nonpermitted users.

SOURCES: Codes, 1942, § 10079-06; Laws, 1969 Ex Sess, ch. 55, § 6; Laws, 1981, ch. 468, § 56; Laws, 1982, ch. 410, § 7; Laws, 1984, ch. 427, § 1; Laws, 1987, ch. 322, § 16; Laws, 1994, ch. 518, § 1; Laws, 1994, ch. 557, § 21; Laws, 2014, ch. 467, § 2, eff from and after July 1, 2015.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1984, ch. 427, § 2, effective from and after July 1, 1984 provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 59, Mississippi Code of 1972, prior to July 1, 1984, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1984, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1984, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Distributor's permit, see § 27-59-7.

Deposit of certain proceeds from tax into special fund for administration of Liquified Compressed Gas Equipment Inspection Law codified at § 75-57-1 et seq., see § 27-59-49.

Requirement that certain records be maintained with respect to the taxes levied by this section, see § 27-61-12.

Assessment on compressed gas for Propane Education and Research Fund, see § 75-57-119.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 524 et seq.

§ 27-59-12. Exemptions.

There shall not be included in the measure of the tax levied in this chapter any compressed gas:

(a) Sold or delivered by a permitted distributor of compressed gas to a second permitted distributor of compressed gas, who shall become liable for the tax unless said compressed gas is sold by the second permitted distributor to a third permitted distributor. The third permitted distributor of compressed gas shall be liable for the tax.

(b) Which as an unfinished product, is used by a refinery in the manufacturing or refining of petroleum products.

(c) Sold to the United States government for use of the armed forces only, and delivered in quantities of not less than four thousand (4,000) gallons.

(d) Delivered to a bonded warehouse for storage within this state for the United States Department of Interior.

(e) Exported to a destination beyond the boundaries of this state by a permitted distributor of compressed gas, when the tax on such compressed gas has been paid or on which the tax liability imposed by this chapter has accrued against said permitted distributor.

(f) Exported by any person to a destination beyond the borders of this state in quantities of not less than three thousand (3,000) gallons by ship, vessel, barge, railroad tank car, or pipeline, or by tank truck if such tank truck is operated by a common or contract carrier.

(g) Sold or delivered to any person within this state to be used in a commercial process where it becomes a component part of any manufactured product or where used as a processing agent in the treatment of raw material in any manufacturing process.

(h) Sold or delivered to be used for test purposes at any regularly established testing laboratory in this state.

(i) Sold or delivered to be used for the purpose of generating electricity.

When compressed gas is excluded from the tax levied in this chapter by one or more of the exemptions provided, the deduction for the exemption may be taken, without the prior approval of the commission, on the monthly tax report of the distributor of compressed gas importing, selling, delivering or exporting such compressed gas. The commission may require such proof as is reasonably necessary for the administration of this chapter.

Any person who has delivered or sold compressed gas on which the tax has been paid by him to the vendor may, if the compressed gas is subject to exemption under this chapter, assign his claim for exemption to any permitted distributor of compressed gas in this state. Such distributor may deduct the amount of the tax exemption from his next compressed gas tax report, provided the distributor furnishes evidence satisfactory to the commission that the claim for exemption is valid.

In order to claim exemptions provided for under this chapter, the distributor of compressed gas must file claims therefor within three (3) years from the date of sale or delivery; otherwise, claims for such exemptions shall be disallowed.

SOURCES: Laws, 1982, ch. 410, § 8; Laws, 1989, ch. 518, § 8, eff from and after July 1, 1989.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 518, § 9, effective from and after July 1, 1989, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-13. Monthly report and remittance.

The excise taxes levied in this chapter shall become due and payable on or before the twentieth day of the month succeeding the month in which the tax accrues. Each distributor shall file with the commission a monthly report setting forth the quantity of compressed gas received within this state, less any authorized exemptions; the quantity of compressed gas sold for use on the highways of this state; and any other information as may be reasonably necessary for the administration of this chapter. The distributor shall remit to the commission, with the monthly report, the full amount of the excise tax shown thereon to be due.

Reports and payments sent to the commission by mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be postmarked by the first working day following the due date in order to be considered timely filed.

An amount equal to One-fourth Cent (¼¢) per gallon on all compressed gas shown to be taxable for highway use may be deducted; provided, that the One-fourth Cent (¼¢) per gallon tax on such compressed gas has been paid or is covered by the bond of a distributor of compressed gas.

The monthly report of the distributor shall be prepared and filed with the commission on forms prescribed by the commission or the distributor may, with the approval of the commission, furnish the required information on machine-prepared schedules. Such monthly reports shall be signed by the distributor or his duly authorized agent and contain a declaration that the statements contained therein are true and are made under the penalty of perjury.

All persons storing compressed gases, excepting natural gas, in underground caverns or cavities in this state shall make monthly reports of withdrawals of such compressed gases from storage, on forms prescribed by the commission at the same time, in the same manner, and subject to the same terms, conditions and penalties as is otherwise provided for distributors of compressed gas. Sales and deliveries of compressed gases to nonpermitted distributors shall be listed and reported on such reports separately from sales and deliveries to permitted distributors.

SOURCES: Codes, 1942, § 10079-07; Laws, 1969 Ex Sess, ch. 55, § 7; Laws, 1981, ch. 468, § 57; Laws, 1982, ch. 410, § 9; Laws, 1996, ch. 306, § 10, eff July 1, 1996.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1996, ch. 306, § 13, effective July 1, 1996, provides as follows:

"SECTION 13. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Crime of perjury, see § 97-9-59.

§ 27-59-15. Repealed.

Repealed by Laws of 1981, ch. 468, § 74, effective from and after July 1, 1981.

[Codes, 1942, § 10079-08; Laws, 1969 Ex Sess, ch. 55, § 8]

Editor's Note — Former § 27-59-15 related to record of licenses.

§ 27-59-17. Power of motor vehicle comptroller to cancel permits.

If a permittee shall at any time file a false report of any date or information required by this chapter, or shall fail, refuse or neglect to file any report as required by this chapter, or to pay the full amount of any tax required by this chapter, or fail to maintain accurately any required records, the comptroller may cancel his permit; provided, however, that, before canceling any such permit, the comptroller shall notify the permittee to show cause within ten (10) days of the date of the notice why such permit should not be canceled; and provided also that at any time prior to and pending such hearing the comptroller may, in the exercise of reasonable discretion, suspend such permit.

SOURCES: Codes, 1942, § 10079-09; Laws, 1969 Ex Sess, ch. 55, § 9, eff from and after November 1, 1969.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 88, 90, 91, 93, 95.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq (proceedings relating to suspension or revocation of license).

CJS. 53 C.J.S., Licenses §§ 82-99.

§ 27-59-19. Repealed.

Repealed by Laws of 1982, ch. 410, § 21, effective from and after July 1, 1982.

[Codes, 1942, § 10079-10; Laws, 1969 Ex Sess, ch. 55, § 10]

Editor's Note — Former § 27-59-19 provided for comptroller to determine the amount of liquefied compressed gas sold or used.

§ 27-59-21. Repealed.

Repealed by Laws of 1981, ch. 468, § 74, effective from and after July 1, 1981.

[Codes, 1942, § 10079-11; Laws, 1969 Ex Sess, ch. 55, § 11]

Editor's Note — Former § 27-59-21 related to penalty for failure to pay tax.

§ 27-59-23. Noncompliance punishable by injunction against doing business.

When any distributor or other person shall fail to submit his or its monthly report as hereinabove provided, or when any distributor or other person shall fail to keep such records as required hereinabove, or fail to allow inspection of such required records as provided in this chapter, such distributor or other person shall forfeit his right to do business as a distributor in this state for a period of not less than three (3) months, and an injunction shall be issued by any judge or chancellor, authorized to issue injunctions, enjoining said distributor or other persons from continuing said business of distributor for not less than three (3) months.

SOURCES: Codes, 1942, § 10079-12; Laws, 1969 Ex Sess, ch. 55, § 12; Laws, 1982, ch. 410, § 10, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-25. Retention of records by distributors and other persons; statute of limitations for actions by state to recover additional amounts.

Each distributor of compressed gas shall maintain and keep for a period of three (3) years a record of all compressed gas received, acquired, manufactured, refined, purchased, sold or delivered within this state, together with invoices, bills of lading and other pertinent records and papers as the commission may deem reasonably necessary for the administration of this chapter.

Any person owning or operating a motor vehicle or motor vehicles, with a gross license tag weight classification exceeding ten thousand (10,000) pounds, that use or are capable of using compressed gas as a motor fuel shall maintain and keep for a period of three (3) years records from which an accurate determination of the number of miles traveled in this state and the quantity of compressed gas purchased and consumed in this state can be made.

If a distributor of compressed gas or the owner or operator fails to maintain adequate records, or if an audit of the records of the distributor or owner or operator, or any report filed by him, or any other information discloses that taxes are due and unpaid, the commission shall make assessments of taxes, damages and interest from any information available, which assessments shall be prima facie correct.

If, in the normal conduct of a distributor's or owner's or operator's business, the records of the distributor, owner or operator are maintained and kept at an office outside the State of Mississippi, it shall be a sufficient compliance with this section if the records shall be made available for audit and examination by the commission at such office location outside Mississippi. If a distributor, owner or operator fails or refuses to permit the commission or any of its employees to check and audit his records during the usual business hours of the day, the commission shall have authority to subpoena the records and have them brought to the office of the commission within ten (10) days after the subpoena is served on the distributor, owner or operator.

All actions by the state for the recovery of additional amounts claimed as tax due under this chapter must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided that in the case of fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time. However, when an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified thereof either by certified mail or personal delivery of a notice by an agent of the commissioner, within the thirty-six-month examination period provided herein, the determination of the correct tax liability may be made by the commission after the expiration of said thirty-six-month examination period, provided that the determination shall be made with reasonable promptness and diligence.

SOURCES: Codes, 1942, § 10079-13; Laws, 1969 Ex Sess, ch. 55, § 13; Laws, 1981, ch. 468, § 58; Laws, 1982, ch. 410, § 11; Laws, 2006, ch. 344, § 4, eff from and after July 1, 2006.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows: "SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Statute of limitations generally, see § 15-1-1 et seq.

§ 27-59-27. Repealed.

Repealed by Laws of 1982, ch. 410, § 22, effective from and after July 1, 1982.

[Codes, 1942, § 10079-14; Laws, 1969 Ex Sess, ch. 55, § 14]

Editor's Note — Former § 27-59-27 related to annual privilege tax.

§ 27-59-29. Compressed gas user's decal for motor vehicles; fee; classifications.

(1) Any person operating a motor vehicle or motor vehicles of any type on the highways of the State of Mississippi that use or are capable of using any compressed gas, except liquefied natural gas, as a motor fuel shall, before operating such motor vehicle or motor vehicles, obtain from the department a compressed gas user's decal.

(2) The owner or operator of a motor vehicle or motor vehicles described in subsection (1) of this section shall file with the department an application for a compressed gas user's decal for each vehicle not later than fifteen (15) days after the installation of the compressed gas carburetion equipment or the acquisition of the motor vehicle or motor vehicles. The application shall be made on forms prescribed by the department and shall contain such information as the department may deem reasonably necessary for administration of this chapter.

(3) No motor vehicle privilege license tag and decal shall be issued by the county tax collector to the operator of a motor vehicle that uses or is capable of using compressed gas on the highways of this state unless an application for a compressed gas user's decal has been filed or the motor vehicle bears a current compressed gas user's decal. The county tax collector shall require an application and the annual privilege tax required by this chapter from each applicant for a motor vehicle privilege license tag and decals, whether the tag and decals are to be issued by the tax collector or by the department. If the applicant has obtained the approval of the department to operate as a "nonpermitted user," then the prepayment of taxes is not required; however, an application for a decal must be made. The county tax collector shall forward the application and fee to the department within fifteen (15) days from the date it is received by him, and the county tax collector shall be entitled to retain One

Dollar ($1.00) for each application and fee received by him and forwarded to the department. The fee shall be forfeited by the county tax collector if he fails to forward any application and remittance within fifteen (15) days of receipt by him. Every person engaged in business as a dealer of compressed gas carburetion equipment or in the business of installing compressed gas carburetion equipment shall, at the time of installation, collect the compressed gas user's annual privilege tax. If the operator of the motor vehicle has obtained the approval of the department to operate as a nonpermitted user, then the prepayment of taxes is not required; however, an application for a decal must be made. The dealer or installer shall forward any application and remittance to the department within fifteen (15) days of receipt by him. The dealer and installer shall be subject to the same requirements and penalties as a distributor of compressed gas. This subsection shall not apply to a motor vehicle that uses liquefied natural gas and no other compressed gas.

(4) No automobile or truck dealer shall operate any motor vehicle, for demonstration purposes bearing a Mississippi motor vehicle dealer tag, that uses or is capable of using compressed gas on the highways of this state, unless said dealer has paid the annual privilege tax applicable to each vehicle and secured from the department a certificate of authority to operate the motor vehicle or motor vehicles on the highways of this state for demonstration purposes only. No dealer may receive or use a certificate of authority for the operation of any motor vehicle that does not bear a Mississippi dealer tag.

(5) Motor vehicles using or capable of using compressed gas as a motor fuel and:

(a) Having a gross license tag weight classification of ten thousand (10,000) pounds or less shall be designated "Class I" motor vehicles;

(b) Having a gross license tag weight classification of ten thousand (10,000) pounds but not exceeding twenty thousand (20,000) pounds shall be designated "Class II" motor vehicles;

(c) Having a gross license tag weight classification greater than twenty thousand (20,000) pounds shall be designated "Class III" motor vehicles; and

(d) Owned or operated by nonpermitted users shall be designated "Class IV" motor vehicles.

(6) The department shall provide for the issuance of the decals required to be issued by this section for each of the user's classifications described in subsection (5) of this section and the decals shall be in a form and size as the department may prescribe. The decals shall be displayed on the motor vehicle at all times and in a manner prescribed by the department.

(7) The decals issued under this section shall expire at the same time as the motor vehicle privilege license tag expires and shall be valid for one (1) year; however, when a motor vehicle is converted to a compressed gas other than liquefied natural gas in a month other than when the license tag is purchased or renewed, then the pro rata portion of the annual privilege tax shall be due on the number of months until the motor vehicle privilege license tag expires. Provided further, that when a motor vehicle equipped with a compressed gas carburetion system is acquired or a motor vehicle is converted

to a compressed gas other than liquefied natural gas, the compressed gas decal year shall begin with the month following the month in which the motor vehicle is acquired or converted.

SOURCES: Codes, 1942, § 10079-15; Laws, 1969 Ex Sess, ch. 55, § 15; Laws, 1976, ch. 361, § 19; Laws, 1978, ch. 374, § 1; Laws, 1981, ch. 468, § 59; Laws, 1982, ch. 410, § 12; Laws, 1991, ch. 384, § 5; Laws, 2014, ch. 467, § 3, eff from and after July 1, 2015.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1991, ch. 384, § 6, effective from and after July 1, 1991, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 59, Mississippi Code of 1972, prior to July 1, 1991, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1991, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1991, or for the filing of reports and the imposition of any penalties, forfeitures or claims for failure to comply therewith."

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 80, 81, 85.

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 27-59-31. Penalty for operating without compressed gas user's decal.

No person shall operate or cause to be operated, upon the highways of this state, a motor vehicle or motor vehicles that use or are capable of using compressed gas as a motor fuel, when such person has not paid the taxes levied in this chapter and the motor vehicle does not display a compressed gas user's decal.

Any person who does not file an application to obtain a compressed gas user's decal within fifteen (15) days from the date of the installation of the compressed gas carburetion equipment or the acquisition of a motor vehicle or motor vehicles with such equipment attached or who fails to file a renewal application within fifteen (15) days after the expiration of the compressed gas user's decal shall be liable for the full amount of the annual privilege tax or prepaid portion thereof and a penalty of twenty-five percent (25%) of the taxes levied herein may be added as damages.

If any county tax collector shall enforce the collection of any delinquent annual privilege tax or annual permit fee, together with the penalty thereon required by law, then such county tax collector shall be entitled to one-half (½) of the penalty. The fee shall be forfeited by the county tax collector if he shall fail to forward any application and remittance within fifteen (15) days of receipt by him.

SOURCES: Codes, 1942, § 10079-16; Laws, 1969 Ex Sess, ch. 55, § 16; Laws, 1978, ch. 374, § 2; Laws, 1982, ch. 410, § 13, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-59-33. Annual reports of Class II and Class III users.

Each person to whom a Class II or Class III compressed gas user's decal is issued shall file an annual report with the commission. Such report shall be filed at a time designated by the commission, shall be on forms prescribed by the commission and shall contain such information as the commission deems reasonably necessary for the administration of this chapter.

The commission is authorized and empowered to promulgate rules and regulations setting forth the method for determining the quantity of compressed gas used on the highways of this state.

The portion of the privilege taxes prepaid at the time the application for the permit was made shall be deducted from the amount of tax shown to be due on the quantity of compressed gas used on the highways. Any balance due shall be paid to the commission at the same time the annual report is filed. If the amount prepaid exceeds the amount of tax shown to be due, a claim for refund or credit may be made. All such claims shall be supported by sufficient proof as to the extent of the claimant's tax liability on each motor vehicle. Refunds shall be made as provided in Section 27-55-19.

The operator of any motor vehicle or motor vehicles which are equipped so that more than one (1) type of fuel can be used shall be liable for the tax upon the total quantity of compressed gas consumed within the state, with no credit allowed for the purchase of any fuel other than compressed gas.

SOURCES: Codes, 1942, § 10079-17; Laws, 1969 Ex Sess, ch. 55, § 17; Laws, 1981, ch. 468, § 60; Laws, 1982, ch. 410, § 14, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Record or log of speedometer readings to be maintained by persons required to report vehicle speedometer readings under this section, see § 27-59-37.

§ 27-59-35. Refunds.

If a motor vehicle on which the annual privilege tax or portion thereof has been paid is damaged to the extent it cannot be used or the compressed gas carburetion equipment has been removed from such motor vehicle, the owner or operator may obtain a refund of the unexpired portion of the tax. Such refund shall be prorated from the first day of the month succeeding the month in which the motor vehicle was damaged to the extent it cannot be used or the compressed gas equipment was removed. In order to obtain such refund the claimant shall prove to the satisfaction of the commission that the motor vehicle was damaged to the extent it cannot be used or the compressed gas carburetion equipment was removed.

When a motor vehicle that uses or is capable of using compressed gas is sold or traded, the decal may be transferred to the new owner or the former owner may remove it, return it to the commission and file a claim for a refund on the unexpired portion.

If a claim for refund is approved, the amount thereof shall be refunded as provided in Section 27-55-19.

SOURCES: Codes, 1942, § 10079-18; Laws, 1969 Ex Sess, ch. 55, § 18; Laws, 1971, ch. 489, § 1; Laws, 1982, ch. 410, § 15, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Gasoline and motor fuel tax refunds for losses, see § 27-55-27.

Oil tax refunds for losses, see § 27-57-19.

§ 27-59-37. Administration and enforcement.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in said sales tax law, except that in cases of conflict, then the provisions of this chapter shall control.

SOURCES: Codes, 1942, § 10079-19; Laws, 1969 Ex Sess, ch. 55, § 19; Laws, 1981, ch. 468, § 61; Laws, 1982, ch. 410, § 16, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Mississippi Sales Tax Law generally, see § 27-65-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 27-59-39. Exemptions.

Nothing in this chapter shall be construed to apply to nonresident private carriers of passengers temporarily located in or operated on the highways of this state for a period of not more than thirty (30) days; nor shall this chapter apply to motor vehicles owned and operated by persons who have furnished bonds and obtained interstate fuel use permits under the provisions of interstate carriers as now or hereafter amended. Provided, however, nothing in this section shall be construed to exempt any such vehicles from liability for privilege taxes upon the fuel used in such vehicles.

SOURCES: Codes, 1942, § 10079-20; Laws, 1969 Ex Sess, ch. 55, § 20, eff from and after November 1, 1969.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Interstate commercial carriers motor fuel tax, see § 27-61-1 et seq.

§ 27-59-41. Right to inspection.

The commission shall have full access, ingress, and egress at all reasonable hours to and from any place or building where compressed gas may be received, stored, transported, sold, offered or exposed for sale, manufactured, refined, distilled, compounded or blended. The commission shall have the right to open and inspect any case, package, or other container, and any tank, pump, tank car or storage tank in which compressed gas is kept and enter upon any barge, vessel, or other vehicle transporting compressed gas and, with instruments conforming to the weights and measures adopted by the United States Bureau of Standards, check any measuring device or volume of weight of the contents of any such container.

The commission shall have the right, at any time, to stop any motor vehicle traveling on the highways of this state, and make any examination necessary to ascertain that the provisions of this chapter are complied with fully. The commission is also authorized to impound any motor vehicle operating in violation of this chapter and hold it until such time as all taxes and fines have been paid and until the owner or operator has obtained necessary permit decal or permit decals.

SOURCES: Codes, 1942, § 10079-21; Laws, 1969 Ex Sess, ch. 55, § 21; Laws, 1982, ch. 410, § 17; Laws, 1986, ch. 395, § 5, eff from and after July 1, 1986.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the

executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — General duties of constables, see § 19-19-5.

Duties of sheriff generally, see § 19-25-67.

Weights and measures, see § 75-27-1 et seq.

Liquefied petroleum gas inspection law, see § 75-57-1 et seq.

Federal Aspects — United States Bureau of Standards generally, see 15 USCS §§ 203, 271 et seq.

§ 27-59-43. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

[Codes, 1942, § 10079-22; Laws, 1969 Ex Sess, ch. 55, § 22; Laws, 1981, ch. 468, § 62, eff from and after July 1, 1981.]

Editor's Note — Former §§ 27-59-43 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-59-45. Commission to institute proceedings; sequestration; lien; seizure.

The commission is hereby authorized and empowered to institute legal proceedings for any and all violations of this chapter, to recover taxes, damages or penalties due under this chapter. All taxes and damages recovered in any proceedings by the commission shall be paid over and disposed of as any and all other compressed gas taxes are required to be. Any chancellor or judge, authorized to grant remedial writs, shall grant writs of sequestration for the impounding of compressed gas on which the excise tax or penalties is owed. Before any writ of sequestration shall be issued under this section, the complainant shall make an affidavit showing that he had good cause to believe, and does believe, that there is an excise tax or penalty owed the State of Mississippi on compressed gas sought to be sequestered and that unless said compressed gas is sequestered and impounded, said compressed gas will be removed, concealed, or disposed of. Upon such affidavit being presented to any chancellor or judge authorized to grant remedial writs, said chancellor or judge shall order said writ to be issued upon the filing of a bill of complaint for the collection of the excise tax on said compressed gas. The writ of sequestration shall then be issued and the property dealt with in the manner now provided by law for other writs of sequestration. Where the State of Mississippi is the complainant, no bond shall be required of said state for the issuance of said writ of sequestration.

The State of Mississippi shall have a lien upon all of the property of every distributor or person acting as a distributor without a permit, used in the operation of his business as such distributor for the excise taxes levied in this chapter and due or to become due the State of Mississippi. Such liens or encumbrances of whatever character shall be paramount to private liens and to the rights of any holder of the legal title in or to any pumps, tanks, inventories of compressed gas and other petroleum products, motor vehicles, or other personal property used in the operation of said business.

The commission shall have the right, when taxes due the State of Mississippi are delinquent under this chapter, or where any person acting as a distributor without a permit imports, receives, purchases, manufactures, refines or otherwise obtains any compressed gas or who sells or delivers compressed gas for use in a motor vehicle in this state without paying the tax thereon, to issue a writ of summons and seizure, returnable to the court having jurisdiction thereof, in like manner as such writs are authorized to be issued by Chapter 7 of Title 85, Mississippi Code of 1972. Said writ shall be directed to the proper officer or representative of the commission commanding the officer or representative of the commission to seize the property upon which a lien exists as hereinabove provided. After the issuance of said writ, such actions and proceedings shall be had on said writ as presently provided for the enforcement of purchase money security interests by the statutes of this state. Provided, however, that the commission or its representative shall have the right to stop and hold any moving or movable equipment, as set out in this paragraph, pending the issuance of process.

It is expressly provided that the remedies set out in the foregoing paragraphs shall be cumulative and that no action taken by the commission shall be construed to be an election on the part of the state or any of its officers, to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter.

SOURCES: Codes, 1942, § 10079-23; Laws, 1969 Ex Sess, ch. 55, § 23; Laws, 1981, ch. 468, § 63; Laws, 1982, ch. 410, § 18, eff from and after July 1, 1982.

Editor's Note — Laws of 1982, ch. 410, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Tax suits by attorney general, see § 7-5-55.

Sequestration proceedings, see § 11-29-1 et seq.

Action to recover tax, penalty and interest, see § 27-35-5.

Purchase money security interests under the Uniform Commercial Code, see §§ 75-9-103, 75-9-317, 75-9-324.

§ 27-59-47. Refund of taxes erroneously or illegally collected.

In the event that any taxes, permit fees or penalties imposed by this chapter have been erroneously or illegally collected from a distributor or other person, the commission may, upon approval by the commission, permit such distributor or other person to take credit against a subsequent tax report for the amount of the erroneous overpayment, or may issue payment for that amount. The amount thereof may be refunded to the distributor or other person in the same manner as provided in Section 27-55-19.

No refunds shall be made under the provisions of this section unless a written claim is filed setting forth the circumstances by reason of which such refund should be allowed. Said claim shall be in such form as the commission shall prescribe, and shall be filed with the commission within three (3) years from the date of payment of the taxes or permit fees erroneously or illegally collected.

Nothing in this chapter shall be construed to prohibit a refund or credit for tax paid on liquefied compressed gas not subject to tax or which is exempt from tax, provided there has not been a willful disregard of the provisions of this chapter, and provided this claim is filed within three (3) years.

SOURCES: Codes, 1942, § 10079-24; Laws, 1969 Ex Sess, ch. 55, § 24; Laws, 1981, ch. 468, § 64, eff from and after July 1, 1981.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Refund of taxes generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 538.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 383 (complaint, petition, or declaration against corporation to recover sums erroneously refunded as overpayments of excise taxes); Form 411(claim for refund of excise tax).

CJS. 84 C.J.S., Taxation §§ 1049 et seq.

§ 27-59-49. Apportionment of proceeds of tax.

(1) Except as provided in subsection (2) of this section, all proceeds of the tax collected under the provisions of this chapter shall be paid and apportioned by the commission in the same manner as payments on gasoline are made in accordance with Section 27-5-101, Mississippi Code of 1972.

(2) The proceeds of the One-fourth Cent (¼¢) per gallon tax imposed in subsection (1) of Section 27-59-11, Mississippi Code of 1972, shall be deposited by the commission into a special fund hereby established in the State Treasury and shall be expended, pursuant to appropriation by the Legislature, to defray the expenses of the State Fire Marshal in the administration of the Liquefied Compressed Gas Equipment Inspection Law.

SOURCES: Codes, 1942, § 10079-25; Laws, 1969 Ex Sess, ch. 55, § 25; Laws, 1987, ch. 322, § 17; Laws, 1987, ch. 422, § 54, eff from and after January 1, 1988.

Editor's Note — Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Apportionment of excise taxes on gasoline and petroleum products, see § 27-5-101.

Liquefied Compressed Gas Equipment Inspection Law, see § 75-57-1 et seq.

§ 27-59-51. Funds placed in depositories.

All funds collected by the commission under the provisions of this chapter, or under the provisions of any other law, which may now or in the future be collected by said commission, are hereby designated as public funds of the State of Mississippi and shall be by it deposited in accordance with Section 7-9-21. Allocations of gasoline, diesel fuel or kerosene tax to the counties shall be made by the commission as provided by law and reported to the state treasurer at the end of each month. The state treasurer shall issue his requisition in payment thereof on the state auditor, who shall issue his warrant on the state Treasurer, as is provided for the disbursement of other state funds.

SOURCES: Codes, 1942, § 10079-26; Laws, 1969 Ex Sess, ch. 55, § 26; Laws, 1979, ch. 417, § 7; Laws, 1981, ch. 468, § 65; Laws, 1984, ch. 478, § 22, eff from and after July 1, 1984.

Editor's Note — Section 7-7-2 provides that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides that:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides, as follows:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Apportionment of excise taxes on gasoline and petroleum products, see § 27-5-101.

State depositories, see § 27-105-1 et seq.

§ 27-59-53. Exchange of information with other states.

The commission may provide any department or agency of any state or the United States responsible for the enforcement of compressed gas taxes any information it may have relative to the manufacture, receipt, sale, use, transportation and/or shipment of compressed gas by any person. The commission may provide any department or agency of any state or the United States that is responsible for the enforcement of compressed gas taxes any demographic information it may have relative to distributors of compressed gas. The commission may place such information in a national database or clearinghouse in order to facilitate the exchange of such information.

SOURCES: Codes, 1942, § 10079-27; Laws, 1969 Ex Sess, ch. 55, § 27; Laws, 2001, ch. 390, § 4, eff from and after passage (approved Mar. 11, 2001.)

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-55. Repealed.

Repealed by Laws of 1981, ch. 468, § 74, effective from and after July 1, 1981.

[Codes, 1942, § 10079-30; Laws, 1969 Ex Sess, ch. 55, § 30]

Editor's Note — Former § 27-59-55 related to deposit of funds paid to comptroller.

§ 27-59-57. Authority to make rules and regulations.

The comptroller is hereby given power and authority to make all rules and regulations, not inconsistent with the provisions of this chapter, with reference to all petroleum excise tax provisions and exemptions governing the making of reports and contents of same and doing any and all other duties pertaining to the making of reports and payment of taxes, and such other matters as will, in the judgment of the comptroller, contribute to a more efficient administration of all the petroleum excise tax provisions of this chapter. Such rules and regulations, when made, shall have the same binding force and effect as if incorporated in this chapter.

SOURCES: Codes, 1942, § 10079-31; Laws, 1969 Ex Sess, ch. 55, § 31, eff from and after November 1, 1969.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-59. Effect of prior law.

This chapter shall not release or relinquish any liability or penalty incurred or right accrued under the provisions of Chapter 264, Laws of 1946, as amended, or Chapter 267, Laws of 1946, as amended, as they existed before November 1, 1969, and such provisions shall be considered as remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of any such liability, penalty or right. Such provisions shall govern the reporting and payment of taxes on liquefied compressed gas sold, delivered or used by bonded distributors or other persons for highway use before November 1, 1969. Any and all matters, orders, hearings, and proceedings pending before the comptroller or before any court under provisions of such prior law shall continue with the same effect as though such prior provisions were not amended or repealed.

SOURCES: Codes, 1942, § 10079-28; Laws, 1969 Ex Sess, ch. 55, § 28, eff from and after November 1, 1969.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

ARTICLE 3.

USER TAX.

SEC.

27-59-301. Administration of article.
27-59-303. Definitions.
27-59-305. Issuance and revocation of permits.
27-59-307. Tax on natural gas, locomotive fuel, and compressed gas used for certain purposes.
27-59-309. Exemptions.
27-59-311. Payment of tax; filing of reports.
27-59-313. Administrative provisions of sales tax law incorporated into article.
27-59-315. Retention of records; statute of limitations for actions by state for recovery of additional amounts.
27-59-317. Repealed
27-59-319. Refund of taxes erroneously or illegally collected.
27-59-321. Deposit and distribution of funds.
27-59-323. Exchange of information with other states.
27-59-325. Rules and regulations.

§ 27-59-301. Administration of article.

The Department of Revenue, hereinafter called the commission or the department, is hereby vested with the sole power and authority, and is charged with the duty of administering and enforcing the terms and provisions of this article.

SOURCES: Laws, 1989, ch. 462, § 1; Laws, 2009, ch. 492, § 98, eff from and after July 1, 2010.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 27-59-303. Definitions.

The words, terms and phrases as used in this article shall have the following meanings unless the context requires otherwise.

(a) "Natural gas" means a mixture of hydrocarbons and small quantities of nonhydrocarbons existing in the gaseous phase.

(b) "Locomotive fuel" means diesel fuel and any other fuel except gasoline used as fuel in a railroad locomotive.

(c) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust or any other combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(d) "Commission" or "department" means the Department of Revenue, acting either directly or through its duly authorized officers, agents or employees.

(e) "Permittee" means any person holding a user's permit issued under the provisions of this article.

(f) "Industrial purposes" means the operation of machinery used for manufacturing.

(g) "Engine" or "motor" means internal combustion engine.

(h) "Manufacturer" means a person conducting an activity of an industrial or commercial nature wherein labor or skill is applied by hand or by machinery, to materials belonging to the manufacturer so that a new, different or more useful article of tangible personal property or article of trade or commerce is produced for sale or rental.

(i) "Custom processor" means a person who performs the services of a manufacturer upon the property of a customer.

(j) "Compressed gas" means gases derived from petroleum or natural gas which are in the gaseous state at normal atmospheric temperature and pressure, but which may be maintained in the liquid state at normal atmospheric temperature by suitable pressure. As used herein, the term shall be deemed to mean and include methane, ethane, propane, ethylene, propylene, butylene, butane, isobutane, and any and all liquid flammable materials derived from petroleum or natural gas having a vapor pressure exceeding forty (40) pounds per square inch, absolute, at one hundred (100) degrees Fahrenheit. Normal storage of these gases is a liquid under pressure.

SOURCES: Laws, 1989, ch. 462, § 2; Laws, 2009, ch. 492, § 99, eff from and after July 1, 2010.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

§ 27-59-305. Issuance and revocation of permits.

Any person subject to the tax imposed by this article shall apply to the commission for a "user's permit" on forms prescribed by the commission.

Said permit may be revoked by the commission at any time upon ten (10) days written notice, if said permittee shall fail to comply with the provisions of this article.

SOURCES: Laws, 1989, ch. 462, § 3, eff from and after July 1, 1989.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-307. Tax on natural gas, locomotive fuel, and compressed gas used for certain purposes.

There is hereby levied and imposed a tax at a rate of:

(1) Twelve Cents (12¢) per one thousand (1,000) cubic feet (MCF) upon any person using natural gas as a fuel in oil field or gas field production pumps in this state.

(2) Three Cents (3¢) per one thousand (1,000) cubic feet (MCF) upon any person using natural gas as a fuel in pipeline compressors or pumping stations or in engines or motors used for industrial purposes by a manufacturer or custom processor in this state.

(3) Three-fourths Cent (0.75¢) per gallon upon any person using locomotive fuel in a railroad locomotive in this state. The quantity of locomotive fuel deemed to be used in this state shall be the number of gallons of locomotive fuel onloaded into railroad locomotives in this state.

(4) Two Cents (2¢) per gallon upon any person using compressed gas as a fuel in oil field or gas field production pumps in this state.

(5) One-half Cent (0.5¢) per gallon upon any person using compressed gas as a fuel in pipeline compressors or pumping stations or in engines or

motors used for industrial purposes by a manufacturer or custom processor in this state.

SOURCES: Laws, 1989, ch. 462, § 4; Laws, 1995, ch. 385, § 1, eff from and after July 1, 1995.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-309. Exemptions.

The United States government, the State of Mississippi and all agencies, departments and political subdivisions thereof are exempt from the tax levied in this article.

SOURCES: Laws, 1989, ch. 462, § 5, eff from and after July 1, 1989.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-311. Payment of tax; filing of reports.

The tax levied in this article shall become due and payable on or before the twentieth day of the month succeeding the month in which the tax accrues. Each person liable for the tax levied in this article shall file with the commission a monthly report setting forth the quantity of natural gas and/or locomotive fuel used in this state and any other information as may be deemed reasonably necessary for the administration of this article and shall remit the full amount of the taxes shown to be due.

Reports and payments sent to the commission by mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be postmarked by the first working day following the due date in order to be considered timely filed.

The monthly report shall be prepared and filed with the commission on forms prescribed by the commission or with the approval of the commission, on machine-prepared schedules. Such monthly reports shall be signed by the permittee or his duly authorized agent and contain a declaration that the statements contained therein are true and are made under the penalty of perjury.

SOURCES: Laws, 1989, ch. 462, § 6; Laws, 1996, ch. 306, § 11, eff from and after July 1, 1996.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1996, ch. 306, § 13, effective July 1, 1996 provides as follows:

"SECTION 13. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the gasoline and motor fuel tax, oil tax and liquefied compressed gas tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-59-313. Administrative provisions of sales tax law incorporated into article.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns and for other noncompliance with the provisions of said chapter and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this article, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in said sales tax law, except in cases of conflict, then the provisions of this article shall control.

SOURCES: Laws, 1989, ch. 462, § 7, eff from and after July 1, 1989.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Mississippi Sales Tax Law, see § 27-65-1 et seq.

§ 27-59-315. Retention of records; statute of limitations for actions by state for recovery of additional amounts.

Each person liable for the tax under this article shall maintain and keep for a period of not less than three (3) years records of the quantities of natural gas used, of the quantities of locomotive fuel used, the total miles traveled by railroad locomotives, the miles traveled by railroad locomotives in this state and other information as may be deemed reasonably necessary for the administration of this article.

If, in the normal conduct of business the records of the permittee are maintained and kept at an office outside this state, it shall be sufficient compliance with this section if the records shall be made available for audit and examination by the commission at such office located outside Mississippi. If a permittee fails or refuses to permit the commission or any of its employees to verify and audit its records during the usual business hours of the day, the commission shall have the authority to subpoena the records and have them brought to the office of the commission within ten (10) days after the subpoena is served on the permittee.

All actions by the state for the recovery of additional amounts claimed as tax due under this article must be commenced within a period of three (3) years from the date of the filing of the required report with the commission; provided, that in the case of a fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time. However, when an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified thereof either by certified mail, or personal delivery of a notice by an agent of the commissioner, within the thirty-six (36) months' examination period provided herein, the determination of the correct tax liability may be made by the commission after the expiration of the thirty-six-month examination period, provided that said determination shall be made with reasonable promptness and diligence.

SOURCES: Laws, 1989, ch. 462, § 8; Laws, 2006, ch. 344, § 5, eff from and after July 1, 2006.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-317. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

[Laws, 1989, ch. 462, § 9, eff from and after July 1, 1989.]

Editor's Note — Former § 27-59-317 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-59-319. Refund of taxes erroneously or illegally collected.

In the event that any taxes or penalties imposed by this article have been erroneously or illegally collected from a permittee or any other person, the commission may allow such permittee or other person to take credit against a subsequent tax report for the amount of the erroneous overpayment or the amount thereof may be refunded in the same manner as provided in Section 27-55-19, Mississippi Code of 1972.

No refunds shall be made under the provisions of this section unless a written claim is filed setting forth the circumstances by reason of which such refund should be allowed. Such claim shall be in such form as the commission shall prescribe, and shall be filed with the commission within three (3) years from the date of payment of the taxes erroneously or illegally collected. Nothing in this article shall be construed to prohibit a refund or credit for taxes paid, provided there has not been a willful disregard of the provisions of this article, and further provided that the claim therefor is filed within three (3) years.

SOURCES: Laws, 1989, ch. 462, § 10, eff from and after July 1, 1989.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-321. Deposit and distribution of funds.

(1) Except as otherwise provided in subsection (2) of this section, the proceeds of the tax levied in this article shall be deposited by the commission into the State Treasury to the credit of the General Fund, and such proceeds are hereby designated as public funds of the State of Mississippi and shall be by it deposited in accordance with Section 27-3-57, Mississippi Code of 1972.

(2) The proceeds of the tax on locomotive fuel shall be deposited by the commission into the Railroad Revitalization Fund established in Section 57-43-1, Mississippi Code of 1972.

SOURCES: Laws, 1989, ch. 462, § 11; Laws, 1991, ch. 484, § 1. Reenacted without change, Laws, 1997, ch. 369, § 1, eff from and after June 30, 1997.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1995, ch. 386, § 1, provides as follows:

"SECTION 1. Section 2, Chapter 484, Laws of 1991, which repeals, effective July 1, 1996, Section 27-59-321, Mississippi Code of 1972, which provides that the proceeds of certain fuel taxed shall be deposited into the General Fund and that the tax on locomotive fuel shall be deposited in the Railroad Revitalization Fund, is hereby repealed."

Laws of 1996, ch. 477, §§ 1, 2 provides as follows:

"SECTION 1. Section 2, Chapter 484, Laws of 1991, is amended as follows: Section 2. Section 27-59-321, Mississippi Code of 1972, shall stand repealed on June 30, 1997."

"SECTION 2. Section 1, Chapter 386, Laws of 1995, which repeals Section 2, Chapter 484, Laws of 1991, which repeals, effective June 30, 1996, Section 27-59-321, Mississippi Code of 1972, which provides that the proceeds of certain fuel taxed shall be deposited into the General Fund and that the tax on locomotive fuel shall be deposited in the Railroad Revitalization Fund, is hereby repealed."

Laws of 1997, ch. 369, § 2, provides as follows:

"SECTION 2. Section 2, Chapter 484, Laws of 1991, as amended by Section 1, Chapter 386, Laws of 1995, as amended by Section 1, Chapter 477, Laws of 1996, which repeals effective June 30, 1997, Section 27-59-321, Mississippi Code of 1972, which provides that the proceeds of certain fuel taxes shall be deposited into the General Fund and that the tax on locomotive fuel shall be deposited in the Railroad Revitalization Fund, is repealed."

§ 27-59-323. Exchange of information with other states.

The commission shall, upon request received from officials entrusted with the enforcement of similar laws of any other state, forward to such officials any information it may have relative to the receipt, sale, use, transportation or shipment of natural gas or locomotive fuel.

SOURCES: Laws, 1989, ch. 462, § 12, eff from and after July 1, 1989.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-59-325. Rules and regulations.

The commission is hereby authorized and empowered to adopt and promulgate rules and regulations with reference to the collection of the tax imposed herein and such other reasonable rules and regulations not inconsistent with the provisions hereof which, in its judgment, will contribute to a more efficient administration hereof, and such rules and regulations shall have the force and effect of law.

SOURCES: Laws, 1989, ch. 462, § 13, eff from and after July 1, 1989.

Editor's Note — Laws of 1989, ch. 462, § 15, effective from and after July 1, 1989, provides as follows:

"SECTION 15. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 57 and 59, Mississippi Code of 1972, prior to July 1, 1989, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1989, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1989, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

CHAPTER 61

Interstate Commercial Carriers Motor Fuel Tax

Sec.
27-61-1. Purpose and administration of chapter.
27-61-3. Definitions.
27-61-5. Levy of tax.
27-61-7. Tax accrual and liability; manner of payment.
27-61-8. Waiver of taxes and fees when vehicle operated in response to emergency.
27-61-9. Issuance of interstate fuel use permit; revocation; expiration; issuance and revocation of licenses under International Fuel Tax Agreement; persons ineligible to receive licenses or decals.
27-61-11. Reports and remittance; timely filing of reports and payments.
27-61-12. Record keeping requirements with respect to gasoline, other motor fuel, diesel fuel and compressed gas purchased in bulk.
27-61-13. Credit; refund; use of credits on reports filed under the International Fuel Tax Agreement.
27-61-15. Records.
27-61-17. Repealed.
27-61-19. Rules and regulations; forms.
27-61-20. Motor fuel tax agreements with other states.
27-61-21. Penalties; agreements; rules and regulations.
27-61-23. Basis for determination of tax.
27-61-25. Distribution of proceeds of tax and permit fees.
27-61-27. Reciprocal agreements.
27-61-29. Temporary permits.
27-61-31. Administration and enforcement; interest on late payments; penalties.
27-61-33. Credit or refund for erroneously or illegally collected taxes or penalties.
27-61-35. Repealed

§ 27-61-1. Purpose and administration of chapter.

The purpose of this chapter is to insure that all carriers specified herein, using the highways of this state, shall pay a reasonable tax for the privilege of, and as compensation for, such use.

The Department of Revenue, hereinafter called the "commission" or the "department," is hereby vested with the sole power and authority, and is charged with the duty of administering and enforcing the terms and provisions of this chapter.

SOURCES: Codes, 1942, §§ 10080-02, 10080-12; Laws, 1969 Ex Sess, ch. 60, §§ 2, 12; Laws, 1981, ch. 468, § 66; Laws, 2009, ch. 492, § 100, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:
"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission

prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Gasoline and motor fuel taxes, see § 27-55-1 et seq.

Tax on lubricating oil, see § 27-57-1 et seq.

Liquefied compressed gas tax, see § 27-59-1 et seq.

Mississippi Transportation Commission to provide weight enforcement field personnel to assess and collect taxes, fees, and penalties and perform duties required by this chapter, see § 65-1-8.

§ 27-61-3. Definitions.

When used in this chapter, the following words and phrases shall have the meaning ascribed to them hereby, except where the context clearly describes and indicates a different meaning:

(a) Person: Any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) Motor vehicle: A motor vehicle used, designed or maintained for transportation of persons or property and (i) having two (2) axles and a gross vehicle weight exceeding twenty-six thousand (26,000) pounds; (ii) having three (3) or more axles, regardless of weight; or being used in combination when the gross vehicle weight of such combination exceeds twenty-six thousand (26,000) pounds. The term "motor vehicle" does not include recreational vehicles.

(c) Fuel: Any product which is used, or is capable of being used, for the generation of power for the operation of a motor vehicle.

(d) Commission or department: The Department of Revenue, either acting directly or through its duly authorized officers, agents and employees.

(e) Owner: A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale, lease or transfer of the possession, howsoever, thereof, with the right of purchase upon performance of conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee, lessee, possessor, or in the event such or similar transaction is had by means of a mortgage and the mortgagor of a motor vehicle is entitled to possession, then such conditional vendee, lessee, possessor or mortgagor shall be deemed the owner for the purposes of this chapter.

(f) Highway: The entire width between boundary lines of every way in the state that is publicly maintained or any part of which is publicly maintained and is open or is to be opened to use by the public for the purpose of vehicular travel, including all streets and alleys in cities and towns.

(g) Operator: Any person, partnership, joint stock company or corporation operating on the public highways of this state one or more motor vehicles as the beneficial owner or lessee.

(h) Driver: Any person actually in control of, driving or operating a motor vehicle at any given time.

(i) The terms "gross weight," "common carrier by motor vehicle," "contract carrier by motor vehicle," "private commercial carrier of property by motor vehicle," "private commercial carrier of passengers by motor vehicle" and "private carrier of property" shall, respectively, have the meaning ascribed to them in Article 1 of Chapter 19 of this title, Mississippi Code of 1972.

(j) Retail dealer: Any person not licensed as a distributor who sells gasoline, special fuel, diesel fuel or compressed gas.

(k) Motor carrier: Any person operating a motor vehicle, as defined in this section, on the highways of this state.

(*l*) "Recreational vehicle" means vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

SOURCES: Codes, 1942, § 10080-01; Laws, 1969 Ex Sess, ch. 60, § 1; Laws, 1970, ch. 480; Laws, 1988, ch. 465, § 1; Laws, 1992, ch. 471, § 1; Laws, 1999, ch. 461, § 39; Laws, 2009, ch. 492, § 101, eff from and after July 1, 2010.

Editor's Note — Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1992, ch. 471, § 4, effective from and after July 1, 1992, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 61, Mississippi Code of 1972, before the date on which this act becomes effective, whether such assessments, appeals, suits, claims, or actions shall have been begun before the date on which this act becomes effective, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the assessment, collection and enrollment of liens for any taxes due or accrued thereunder before the date on which this act becomes effective, or for the filing of reports and the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

§ 27-61-5. Levy of tax.

There is hereby levied and imposed, a privilege tax as reasonable compensation for the use of the highways of this state, in addition to all other taxes which may be levied for such purpose, as follows: upon each owner or operator of a common carrier by motor vehicle, contract carrier by motor vehicle, private commercial carrier of property by motor vehicle, common carriers of passengers, contract carriers of passengers, private carrier of passengers by motor vehicle, and private carrier of property, when any of such carriers operate a motor vehicle or motor vehicles that cross the boundary line of the State of Mississippi, a privilege tax equal to and computed at the prevailing excise tax rates for gasoline, special fuel, diesel fuel and compressed gas for highway use on all such fuel used in operating any motor vehicle in this state. The operator of any motor vehicle or motor vehicles which are so equipped that more than one (1) kind of motor fuel can be used shall be liable for the tax at the highest prevailing tax rate of the kinds of motor fuel so used within this state, with no credit allowed for the purchase of fuel with the lesser tax rate.

SOURCES: Codes, 1942, § 10080-03; Laws, 1969 Ex Sess, ch. 60, § 3; Laws, 1972, ch. 487, § 1; Laws, 1980, ch. 507, § 1; Laws, 1982, ch. 438, § 13; Laws, 1983, 2nd Ex Sess, ch. 6, § 10; Laws, 1984, ch. 478, § 23; Laws, 1985, ch. 405, § 1; Laws, 1985, ch. 537, § 4; Laws, 1987, ch. 322, § 18; Laws, 1992, ch. 471, § 2;

Laws, 1993, ch. 315, § 1; Laws, 1999, ch. 461, § 40, eff from and after July 1, 1999.

Editor's Note — Laws of 1982, ch. 438, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1983, ch. 6, §§ 12 and 13, 2nd Ex Session, effective January 1, 1984, provides as follows:

"SECTION 12. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales and use tax laws and the income tax laws prior to the date on which the respective sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the respective sections of this act become effective or shall thereafter be begun; and the provisions of the sales and use tax laws and income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which the respective sections of this act become effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

"SECTION 13. None of the revenues provided under the provisions of this act may be expended for the purpose of restoring any funds which have been reduced by the Governor and Director of the Commission of Budget and Accounting through November 15, 1983, unless specifically authorized by the Legislature."

Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides as follows:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides as follows:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Laws of 1985, ch. 405, § 5, effective from and after July 1, 1985, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 61, Mississippi Code of 1972, prior to July 1, 1985, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1985, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1992, ch. 471, § 4, effective from and after July 1, 1992, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 61, Mississippi Code of 1972, before the date on which this act becomes effective, whether such assessments, appeals, suits, claims, or actions shall have been begun before the date on which this act becomes effective, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the assessment, collection and enrollment of liens for any taxes due or accrued thereunder before the date on which this act becomes effective, or for the filing of reports and the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Apportionment by state tax commission of taxes imposed by this section, see § 27-5-101.

Motor vehicle privilege taxes, see § 27-19-1 et seq.

Gasoline tax, see § 27-55-11.

Liquefied compressed gas tax, see § 27-59-11.

Payment of the tax imposed by this section at the time of filing the quarterly or periodic report, see § 27-61-11.

Applicability of this section to distribution of tax and permit fees collected under Interstate Commercial Carriers Motor Fuel Tax, see § 27-61-25.

RESEARCH REFERENCES

ALR. State taxation of motor carriers as affected by commerce clause. 17 A.L.R.2d 421.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 527, 528.

Lawyers' Edition. State tax or fee imposed for motor carrier's use of highways as violating commerce clause (Article 1, § 8, clause 3) of Federal Constitution — Supreme Court cases. 97 L. Ed. 2d 843.

§ 27-61-7. Tax accrual and liability; manner of payment.

The liability for the tax levied and imposed by this chapter shall arise and accrue at the time and place where any motor vehicle owned or operated by any carrier specified in this chapter shall go or enter upon any highway of this state. The amount of tax for which any owner or operator is liable shall be paid and the tax liability of such owner or operator shall be discharged by one (1) of the following methods:

(a) By the purchase of a sufficient amount or quantity of fuel from a wholesale or retail dealer or distributor to operate such motor vehicle in this state; provided, however, that at the time of the purchase of such fuel, the owner or operator of such motor vehicle shall obtain, from the dealer or distributor from whom purchased, an invoice or sales ticket on forms approved by the commission, which shall contain such information as the commission shall deem reasonably necessary for the administration of this chapter. Said invoices shall remain in the motor vehicle for the remainder of the trip over the highways of this state, and thereafter shall be preserved and retained by the owner or operator for a period of not less than three (3) years, and shall be produced for the inspection and examination of the commission at any reasonable time and place, either within or without this state, upon proper demand therefor.

(b) By having a valid credential issued by any member jurisdiction of the International Fuel Tax Agreement and by complying fully with the International Fuel Tax Agreement.

For the purposes of paragraph (a) of this section, the quantity of fuel needed to operate a motor vehicle in this state shall be determined by dividing the average miles per gallon allowed for each type of classification of motor vehicle into the number of miles such vehicle is deemed to have traveled in the state.

There shall be no credit allowed or adjustment made for any fuel consumed in auxiliary equipment when the fuel consumed by such equipment is supplied by the same fuel tank or tanks that supply fuel for the operation of the motor vehicle. Provided further that no credit shall be allowed or adjustments made for fuel used in power-take-off operations, loading or offloading or for idle time.

SOURCES: Codes, 1942, § 10080-04; Laws, 1969 Ex Sess, ch. 60, § 4; Laws, 1971, ch. 438, § 1; Laws, 1978, ch. 373, § 1; Laws, 1982, ch. 438, § 14; Laws, 1985, ch. 405, § 2; Laws, 1988, ch. 465, § 2; Laws, 1992, ch. 471, § 3; Laws, 1998, ch. 440, § 1, eff from and after passage (approved March 23, 1998).

Editor's Note — Laws of 1982, ch. 438, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1985, ch. 405, § 5, effective from and after July 1, 1985, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 61, Mississippi Code of 1972, prior to July 1, 1985, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1985, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1992, ch. 471, § 4, effective from and after July 1, 1992, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 61, Mississippi Code of 1972, before the date on which this act becomes effective, whether such assessments, appeals, suits, claims, or actions shall have been begun before the date on which this act becomes effective, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the assessment, collection and enrollment of liens for any taxes due or accrued thereunder before the date on which this act becomes effective, or for the filing of reports and the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Action to recover tax, penalty and interest, see § 27-35-5.

Authority of the commissioner to waive the taxes and fees set forth in this section when motor vehicles are operated in state in response to an emergency, see § 27-61-8.

Records to be kept by carrier, see § 27-61-15.

Penalties for violations of this section, see § 27-61-21.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 536.

§ 27-61-8. Waiver of taxes and fees when vehicle operated in response to emergency.

The commission is hereby authorized and empowered, in its discretion, to waive the taxes and fees set forth in Sections 27-61-5 and 27-61-7 when motor vehicles are operated on the highways of this state in response to an emergency, a major disaster, or the threat of a major disaster.

SOURCES: Laws, 1988, ch. 465, § 3, eff from and after July 1, 1988.

Editor's Note — Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-61-9. Issuance of interstate fuel use permit; revocation; expiration; issuance and revocation of licenses under International Fuel Tax Agreement; persons ineligible to receive licenses or decals.

(1) If the commission approves the application and bond, it shall issue to the applicant an interstate fuel use permit which shall remain valid for the calendar year in which it was issued, to expire on December 31 of that year. All such permits shall be revocable by the commission upon thirty (30) days' written notice to the permittee, if the permittee fails or refuses to comply with any of the terms or provisions of this chapter.

(2) A renewal permit for the following calendar year will be issued upon application if: the permit has not been revoked or cancelled; all reports have been filed; and all taxes, penalties and interest due have been paid. Any interstate fuel use permit issued under the provisions of this section before March 12, 1993, shall expire on December 31, 1993.

(3) If the commission approves an application filed under the provisions of the International Fuel Tax Agreement, it shall issue to the applicant a license and decals for each motor vehicle. The license and decals shall expire on December 31 of each year. The International Fuel Tax Agreement may provide for a grace period for the display of the license and decals. Such license and decals may be revoked by the commission upon thirty (30) days' written notice to the licensee, if the licensee fails to file reports, fails to pay taxes due or fails to otherwise comply with the provisions of this chapter or the International Fuel Tax Agreement.

(4) No license or decals shall be issued to any applicant that has been licensed under the International Fuel Tax Agreement and such license is under revocation by any member jurisdiction. No license or decals shall be issued to any applicant who is in arrears or default to this state, or any political subdivision thereof, for any taxes or fees.

SOURCES: Codes, 1942, § 10080-05; Laws, 1969 Ex Sess, ch. 60, § 5; Laws, 1972, ch. 487, § 2; Laws, 1985, ch. 405, § 3; Laws, 1993, ch. 315, § 2; Laws, 2001, ch. 311, § 1; Laws, 2002, ch. 347, § 1; Laws, 2007, ch. 400, § 6, eff from and after passage (approved Mar. 15, 2007.)

Editor's Note — Laws of 1985, ch. 405, § 5, effective from and after July 1, 1985, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 61, Mississippi Code of 1972, prior to July 1, 1985, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1985, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2001, ch. 311, § 9, effective March 5, 2001, provides:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Interstate fuel tax permit, see § 27-61-7.

Fuel identification decals, see § 27-61-9.

Penalty for failure to have identification decals, see § 27-61-21.

Temporary permits upon cancellation of reciprocity, see § 27-61-29.

Appeal procedure for denial of application or request for permit, IFTA license, tag or title, see § 27-77-11.

Appeal procedure for revocation of IFTA license, see § 27-77-12.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 80, 81, 85 et seq.

8 Am. Jur. Legal Forms (1st ed), Licenses, Forms 8:431-8:433 (bond or security for license).

12 Am. Jur. Legal Forms 2d, Licenses and Permits §§ 164:21, 164:22 (financial responsibility).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq (proceedings relating to grant or refusal of license).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq (proceedings relating to suspension or revocation of license).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73 (defense of exemption in action to collect license fee).

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 27-61-11. Reports and remittance; timely filing of reports and payments.

The permittee shall file a quarterly fuel use report for the preceding calendar quarter on or before the last day of the month following each calendar quarter on forms to be prescribed by the commission, or the carriers may, with the approval of the commission, furnish the required information on machine-prepared schedules. Said report shall show any information required by the commission for the administration of this chapter. Such report must be filed even though it may reflect no Mississippi miles for the quarter or accounting period. At the time of filing of each quarterly report, each permittee shall pay to the commission the full amount of the tax due on all fuel used by him in this state at the rate provided for in Section 27-61-5. The permittee in determining the fuel used by him in this state for said period may, as to each type of fuel used, determine his average number of miles of motor vehicle travel for a gallon of fuel by the use of the following formula: There shall first be determined the total miles traveled by all motor vehicles operated by permittee using a particular type of fuel; there shall then be determined the total number of gallons of such fuel consumed; the total number of gallons of such fuel consumed shall then be divided into the total number of miles traveled to determine the average number of miles of motor vehicle travel per gallon of fuel used. Proper records supporting these computations shall be maintained for a period of not less than three (3) years and shall be available to the inspection and audit of the commission. Permittee may, however, use any standards established by the commission in determining the motor vehicle travel per gallon of fuel consumed as to any particular type fuel. The permittee, in computing the amount of tax due, may take credit for all payments of the taxes levied in Sections 27-55-11 and 27-59-11, Mississippi Code of 1972, and Sections 27-55-519 and 27-55-521.

Reports and payments sent to the commission by mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, in which case such reports and payments must be postmarked by the first working day following the due date in order to be considered timely filed.

SOURCES: Codes, 1942, § 10080-06; Laws, 1969 Ex Sess, ch. 60, § 6; Laws, 1971, ch. 438, § 2; Laws, 1978, ch. 373, § 2; Laws, 1980, ch. 507, § 2; Laws, 1981, ch. 468, § 67; Laws, 1987, ch. 322, § 19; Laws, 1988, ch. 465, § 4; Laws, 1999, ch. 461, § 41; Laws, 2001, ch. 311, § 2, eff from and after passage (approved Mar. 5, 2001.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the fourth sentence of the first paragraph by substituting “provided for in Section 27-61-5” for “provided for in paragraph (a) of Section 27-61-5.” The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor’s Note — Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

“SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.”

Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

“SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Laws of 2001, ch. 311, § 9, effective March 5, 2001, provides:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Mississippi Sales Tax Law generally, see § 27-65-1 et seq.

Refund of taxes, generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 538.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 383 (complaint, petition, or declaration against corporation to recover sums erroneously refunded as overpayments of excise taxes); Form 411 (claim for refund of excise tax).

CJS. 84 C.J.S., Taxation §§ 1049 et seq.

§ 27-61-12. Record keeping requirements with respect to gasoline, other motor fuel, diesel fuel and compressed gas purchased in bulk.

The payment of taxes levied in Sections 27-55-11 and 27-59-11, Mississippi Code of 1972, and Sections 27-55-519 and 27-55-521, on gasoline, special fuel, diesel fuel and compressed gas purchased in bulk quantities from a distributor shall be evidenced by invoices showing the quantity of fuel purchased, the type of fuel, the tax rate, the date of the purchase, the purchaser's name and address, and any other information the commission deems necessary for the administration of this chapter. The person withdrawing fuel from bulk storage facilities shall maintain the following records for each withdrawal.

(a) The date the fuel is withdrawn.

(b) The number of gallons.

(c) The fuel type.

(d) The company unit number, or the motor vehicle license plate number and state.

The payment of the aforesaid taxes on gasoline, special fuel, diesel fuel and compressed gas purchased from a distributor or retail dealer and placed in the fuel tank of a motor vehicle shall be evidenced by invoices showing:

(a) The date of sale.

(b) The name and station address of the vendor (printed or with credit card imprint).

(c) The name and address of the purchaser or permittee.

(d) The number of gallons sold.

(e) The signature of the purchaser.

(f) The company unit number, or the motor vehicle license plate number and state.

The invoice must be in triplicate except in cases of credit card purchases. Invoices omitting any of the aforesaid items are not acceptable as proof of purchasing fuel in this state.

When the sale of fuel is through an automated method whereby the purchase is automatically applied to the purchaser's account and a single invoice is issued for multiple purchases, such invoice is acceptable as proof of purchasing fuel in this state.

In cases of a lessee/lessor agreement, invoices will be accepted in either name, provided a legal connection can be made to the reporting party. When the lessor is the reporting party and the lessee is fueling the motor vehicle from his own tax-paid bulk storage facility, the lessee must furnish the following documentation for each instance tax-paid fuel is placed in the motor vehicle:

(a) The date the fuel was withdrawn from the bulk storage facility.

(b) The number of gallons.

(c) The fuel type.

(d) The company unit number, or the motor vehicle license plate number and state.

The commission is hereby authorized and empowered to change, by regulation, the requirements, contents and specifications of the aforesaid invoices when such change is deemed necessary for the administration of this chapter or to achieve uniformity among the states with respect to fuel purchase invoices.

SOURCES: Laws, 1988, ch. 465, § 5; Laws, 1999, ch. 461, § 42, eff from and after July 1, 1999.

Editor's Note — Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1999, ch. 461, §§ 50, 51, effective July 1, 1999, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

§ 27-61-13. Credit; refund; use of credits on reports filed under the International Fuel Tax Agreement.

If the quarterly report filed by any permittee as provided herein shall establish that such permittee has paid a greater amount of tax for such quarter than permittee was liable for under the provisions of this chapter, then the amount of such overpayment may be carried forward and credit therefor taken against subsequent tax liability incurred under the provisions of this chapter, provided such credit is taken on a report filed within three (3) years from the quarter in which such excess tax was paid.

If the quarterly report filed by any permittee as provided herein shall establish that such permittee has paid a greater amount of tax for such quarter than permittee was liable for under the provisions of this chapter, then under the following conditions such permittee may obtain a refund for such excess tax paid: Permittee must file with the commission a claim for refund on tax paid to this state on fuel consumed outside the State of Mississippi on forms provided by the commission. Such excess tax refund may be allowed if it is shown that such permittee has paid to another state under lawful requirements of such state a tax, similar in effect to the tax herein provided, on the use or consumption in such state of fuel purchased in Mississippi to the extent of the fuel consumed in said other state at the rate per gallon of the applicable Mississippi tax on fuel as established by this chapter. All such claims must be submitted to the commission within three (3) years from the quarter in which the excess tax was paid, otherwise such claim shall be disallowed. Upon approval of such claim, the commission shall issue a refund to the permittee for the amount of the excess tax paid.

Refunds may be withheld when the permittee is in arrears or default to this state for any taxes or has failed to file returns as required by the provisions of the laws administered by the commission.

When a report filed by a licensee under the provisions of the International Fuel Tax Agreement indicates a credit for Mississippi due to an overpurchase of fuel in this state, the credit shall first be used to offset the licensee's tax liability in other jurisdictions. After such offset any remaining credit may be carried forward to a future report or may be refunded to the licensee.

SOURCES: Codes, 1942, § 10080-07; Laws, 1969 Ex Sess, ch. 60, § 7; Laws, 1971, ch. 497, § 2; Laws, 1981, ch. 468; § 68; Laws, 1982, ch. 438, § 15; Laws, 1988, ch. 465, § 6; Laws, 2001, ch. 311, § 3, eff from and after passage (approved Mar. 5, 2001.)

Editor's Note — Laws of 1982, ch. 438, § 23, effective from and after July 1, 1982, provides as follows:

"SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1982, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1982, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2001, ch. 311, § 9, effective March 5, 2001, provides:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-61-15. Records.

Each permittee, owner or operator liable for tax under this chapter or person licensed under the provisions of the International Fuel Tax Agreement shall maintain and keep for a period of not less than four (4) years such records of all fuel purchases and all fuel used within this state together with invoices, bills of lading, records of distances traveled and other pertinent records as may be required by the commission for the reasonable administration of this chapter or the International Fuel Tax Agreement. The commission shall have the right to examine and inspect, during the usual business hours of the day, all records, books, papers and other documents relating to the tax liability of any such person. In the event such records, books, papers and other documents are not located in this state and available to the commission, then the commission shall have the authority and power to require such owners or operators, or persons licensed under the provisions of the International Fuel Tax Agreement to produce within this state, at such time and place as the commission may designate, all such records, books, papers and other documents or, at the option of the owner or operator, or persons licensed under the provisions of the International Fuel Tax Agreement duly verified copies thereof. Whenever any permittee shall fail or refuse to file any report required by this chapter, or keep and maintain the records required by this chapter, or shall file an incorrect or fraudulent report, or if an audit of the records of such permittee or any other information discloses that taxes are due and unpaid, the commission shall make assessments of taxes, damages and interest which shall be prima facie correct.

All actions by this state for the recovery of additional amounts claimed as tax due under this chapter must be commenced within three (3) years from the date of the filing of the report with the commission, provided that in the case of a fraudulent or false report with intent to evade tax or a failure to file a report, action may be commenced at any time. However, when the commission has initiated an examination of a taxpayer's records in order to verify reports under this chapter and the taxpayer has been notified thereof by certified mail within the three-year examination period provided herein, the determination of the correct tax liability may be made after the expiration of the three-year examination period, provided that such determination shall be made with reasonable promptness and diligence.

SOURCES: Codes, 1942, § 10080-08; Laws, 1969 Ex Sess, ch. 60, § 8; Laws, 2001, ch. 311, § 4, eff from and after passage (approved Mar. 5, 2001.)

Editor's Note — Laws of 2001, ch. 311, § 9, effective March 5, 2001, provides:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Cancellation of reciprocal agreement for failure or refusal to produce records for examination, see § 27-61-27.

§ 27-61-17. Repealed.

Repealed by Laws of 1982, ch. 438, § 22, effective from and after July 1, 1982.

[Codes, 1942, § 10080-09; Laws, 1969 Ex Sess, ch. 60, § 9]

Editor's Note — Former § 27-61-17 related to receipts and remittances.

§ 27-61-19. Rules and regulations; forms.

The commission is authorized to prescribe any form, receipt or report that may be deemed necessary for the administration of this chapter. The commission is hereby authorized and empowered to adopt and promulgate rules and regulations looking toward the collection of the tax imposed herein and such other reasonable rules and regulations not inconsistent with the provisions hereof which, in its judgment, will contribute to a more efficient administration hereof, and such rules and regulations shall have the force and effect of law.

SOURCES: Codes, 1942, § 10080-10; Laws, 1969 Ex Sess, ch. 60, § 10; Laws, 1988, ch. 465, § 7, eff from and after July 1, 1988.

Editor's Note — Laws of 1988, ch. 465, § 11 effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Interstate fuel tax permit, see § 27-61-7.

§ 27-61-20. Motor fuel tax agreements with other states.

The commission, in its discretion, may enter into the International Fuel Tax Agreement in order to permit base state or base jurisdiction licensing of motor carriers subject to the taxes levied in this chapter.

An agreement may provide for determining the base state for motor carriers, motor carrier's records requirements, audit procedures, exchange of information, persons eligible for tax licensing; issuing and revoking licenses; defining qualified motor vehicles; determining of and under what conditions bonding is required; specifying reporting requirements and periods, determining methods for collecting and forwarding of motor fuel taxes, interest and penalties to another jurisdiction; and such other provisions as will facilitate the administration of the agreement.

An agreement entered into under the provisions of this section shall not restrict the State of Mississippi with regard to determining whether to impose taxes; fixing tax rates; defining tax exemptions or deductions; determining what constitutes taxable events triggering the imposition of taxes or determining any other related matters.

As required by the terms of the agreement, the commission may forward to officials of another state any information in the commission's possession regarding the receipt, sale, use, transportation or shipment of motor fuels, distances traveled and routes traveled by any person. The commission may disclose to officers of another state the location of offices, motor vehicles, and other real and personal property of persons subject to the provisions of a compact or agreement.

The commission may participate in the International Fuel Tax Agreement Clearinghouse and may place into the clearinghouse any information the commission is required to provide to other member jurisdictions under the International Fuel Tax Agreement. The commission may provide information regarding a licensee's status to the officials or law enforcement officers of the State of Mississippi or any other member jurisdiction who are responsible for the enforcement of motor carrier fuel tax laws. The commission also may place such information into the State On-Line Enforcement Network or any other database used for the enforcement of motor carrier fuel tax laws.

An agreement may provide for each state to audit the records of persons based in the state to determine if the motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state to each state in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuels in this state, the commission, in its discretion, may serve the audit findings received from another state in the form of a proposed assessment of the person as though an audit was conducted by the commission.

Any agreement entered into under this section shall not preclude the commission from auditing the records of any person covered by the provisions of this chapter.

The commission may adopt rules and regulations for the administration and enforcement of any agreement.

The commission is authorized to collect motor fuel taxes, interest and fees due the members of any cooperative compact or agreement entered into under the provisions of this section and to deposit such taxes, interest and fees into a special holding fund until such taxes, interest and fees are properly distributed to the members of the compact or agreement.

SOURCES: Laws, 1988, ch. 465, § 8; Laws, 1993, ch. 315, § 3; Laws, 2001, ch. 311, § 5, eff from and after passage (approved Mar. 5, 2001.)

Editor's Note — Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2001, ch. 311, § 5, amended this section to provide that an agreement entered into under the International Fuel Tax Agreement will not restrict the state in certain matters and to provide that the State Tax Commission may participate in data clearinghouses for the exchange of information.

Laws of 2001, ch. 311, § 9, effective March 5, 2001, provides:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-61-21. Penalties; agreements; rules and regulations.

(1) When any person, owner, operator or driver liable for any tax hereunder shall operate a motor vehicle without complying with the provisions of Section 27-61-7 before leaving this state, then such person shall pay a fee in the amount of Twenty Dollars ($20.00). Any person, owner, operator or driver operating a vehicle subject to the provisions of this chapter with a revoked or illegally obtained International Fuel Tax Agreement credential shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) for the first such offense and not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or confinement in the county jail for thirty (30) days or both for such subsequent offense.

(2) The commission is hereby authorized and empowered to enter into reciprocal agreements with neighboring states, whereby private carriers of property operating motor vehicles that cross the state line may be excluded from the provisions of Section 27-61-7, and is further authorized and empowered to issue such administrative rules pertaining to the collection of the tax imposed hereby on private carriers of property as may be reasonable and proper.

(3) If any person shall issue or sign any invoice, bill of sale, or receipt specified in Section 27-61-7, which is false, untrue or incorrect in any material particular, or if any person shall fraudulently alter, change or forge any such invoice, then such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment for each offense.

(4) If any person shall violate any provision of this chapter, then such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) for each offense.

SOURCES: Codes, 1942, § 10080-11; Laws, 1969 Ex Sess, ch. 60, § 11; Laws, 1972, ch. 487, § 3; Laws, 1985, ch. 405, § 4; Laws, 1993, ch. 315, § 4; Laws, 1998, ch. 514, § 1, eff from and after July 1, 1998.

Editor's Note — Laws of 1985, ch. 405, § 5, effective from and after July 1, 1985, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapter 61, Mississippi Code of 1972, prior to July 1, 1985, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1985, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-61-23. Basis for determination of tax.

In order to carry out the purpose of this chapter, the commission is hereby authorized and empowered to promulgate and enforce reasonable rules and regulations, and establish standards for the determination of the number of miles which a gallon of gasoline, diesel fuel, or kerosene would propel the different types and weights of vehicles. In order to carry out the purposes of this chapter, the commission is further authorized and empowered to determine and establish, from the best information obtainable, the average number of miles which each type or kind of fuel will propel each type or class of vehicle.

SOURCES: Codes, 1942, § 10080-12; Laws, 1969 Ex Sess, ch. 60, § 12; Laws, 2001, ch. 596, § 52, eff from and after July 1, 2001.

§ 27-61-25. Distribution of proceeds of tax and permit fees.

All proceeds of the tax and permit fees, collected under the provisions of this chapter, shall be distributed in accordance with Section 27-61-5, Section 27-61-29 or Section 27-5-101, as the case may be.

SOURCES: Codes, 1942, § 10080-13; Laws, 1969 Ex Sess, ch. 60, § 13; Laws, 1987, ch. 322, § 20, eff from and after July 1, 1987 (Governor's veto overridden by Legislature on March 12, 1987).

Editor's Note — Laws of 1987, ch. 322, § 32, effective July 1, 1987, provides as follows:

"SECTION 32. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Apportionment of excise taxes on gasoline and petroleum products, see § 27-5-101.

§ 27-61-27. Reciprocal agreements.

All reciprocal agreements entered into by the commission under the provisions of Section 27-19-143, Mississippi Code of 1972, shall be based upon the terms and provisions of this chapter insofar as such reciprocal agreements relate to common carriers of property, contract carriers of property, private commercial carriers of property, and common or contract carriers of passengers not liable for the gross receipts tax under Section 27-19-7, Mississippi Code of 1972, and full compliance with the provisions of this chapter shall be a condition precedent for the obtaining of the benefits of any such reciprocal agreement by any individual carrier of the classes herein specified. The commission shall from time to time, as it deems necessary, investigate such carriers of the classes herein specified which are known to make regular or frequent trips upon the highways of this state for the purpose of determining whether or not each of such carriers is complying with the provisions hereof, and, for the purpose of such investigation, the commission shall have the power and authority to examine the books and records of any such carrier as provided in Section 27-61-15 of this chapter. As the extension of reciprocity to any carrier is a matter of grace rather than a matter of right, the burden shall, in all cases, be upon the carrier in any such investigation to make proof sufficient to convince the commission of its full compliance with the provisions of this chapter, and unless the commission is so convinced, it shall cancel such reciprocal agreement, insofar as the specific carrier is concerned, for a period of at least sixty (60) days, and until such carrier presents proof sufficient to convince the commission that it is fully complying with this chapter, and, during such period, such carrier shall be denied the benefits of such agreement. If any carrier shall fail or refuse to produce any receipt, invoice, record, book, paper or other document relating to its tax liability under the provisions of this chapter when demanded by the commission, or shall fail or refuse to permit an inspection of its books and records as provided in Section 27-61-15 hereof, the commission shall forthwith cancel such reciprocal agreement, insofar as same applied to such carrier, for a period of at least one hundred twenty (120) days and until the book, record, or paper is produced or an inspection thereof permitted; and during such period such carrier shall be denied the benefits of such agreement. In all cases of the cancellation of any such reciprocal agreement as to any individual carrier, the commission shall immediately notify the carrier affected by such cancellation, in writing by registered mail, and it shall advise the carrier of the reason or reasons for such cancellation and the period thereof.

The commission is hereby vested and empowered with full, complete and final discretion to determine whether or not any reciprocal agreement shall be cancelled insofar as any carrier is concerned, and there shall be no appeal from its decision, it being hereby declared that no carrier has any vested rights in such reciprocal agreements.

SOURCES: Codes, 1942, § 10080-14; Laws, 1969 Ex Sess, ch. 60, § 14; Laws, 2001, ch. 596, § 53, eff from and after July 1, 2001.

Editor's Note — Section 27-19-7, referred to in this section, was repealed by Laws of 1992, ch. 497, § 19, effective November 1, 1992.

§ 27-61-29. Temporary permits.

Whenever, for any reason, the commission shall cancel the reciprocity of any carrier under any reciprocal agreement, then such carrier may obtain a temporary motor vehicle permit from the commission for each vehicle owned and operated which would otherwise be operated under the benefits of such reciprocal agreement. Such permits shall be obtained by making application therefor to the commission, and they shall be issued for the period of time for which the carrier's reciprocity has been cancelled. If, at the end of such period, the carrier is not then entitled to the benefits of the reciprocal agreements, no additional or renewal permit shall be issued to him. The carrier shall pay a fee for each of such permits equal to the proportionate part of the annual privilege license tax provided in Article 1 of Chapter 19 of this title, Mississippi Code of 1972, plus an additional ten percent (10%) of the proportionate part of such tax. All fees so paid shall be for the privilege of using the highways of this state for the length of time during which the carrier's reciprocity is cancelled in lieu of the annual privilege license required under the provisions of Article 1 of Chapter 19 of this title, and all such fees shall be paid into the same fund and distributed in the same manner provided in Article 1 of Chapter 19 of this title. The carrier may, instead of obtaining the permits specified in this section, operate his vehicles by obtaining trip permits as specified in Article 1 of Chapter 19 of this title.

SOURCES: Codes, 1942, § 10080-15; Laws, 1969 Ex Sess, ch. 60, § 15; Laws, 2001, ch. 596, § 54, eff from and after July 1, 2001.

Cross References — Interstate fuel tax permit, see § 27-61-7.

Applicability of this section to distribution of tax and permit fees collected under Interstate Commercial Carriers Motor Fuel Tax, see § 27-61-25.

§ 27-61-31. Administration and enforcement; interest on late payments; penalties.

(1) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns and for other noncompliance with the provisions of the sales tax law, and all other requirements and duties imposed upon taxpayers,

shall apply to all persons liable for taxes under the provisions of this chapter, and the department shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the sales tax law, except that in cases of conflict, then the provisions of this chapter shall control.

(2) Interest at the rate provided for in the International Fuel Tax Agreement may be assessed for the late payment or nonpayment of taxes under this chapter. A penalty of Fifty Dollars ($50.00) or ten percent (10%) of the tax due, whichever is greater, may be assessed for the failure to file a report, the late payment of taxes or the failure to pay taxes.

SOURCES: Laws, 2001, ch. 311, § 6; Laws, 2014, ch. 335, § 1, eff from and after Oct. 1, 2014.

Editor's Note — Laws of 2001, ch. 311, § 9, effective March 5, 2001, provides:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Mississippi Sales Tax Law, see § 27-65-1 et seq.

§ 27-61-33. Credit or refund for erroneously or illegally collected taxes or penalties.

In the event that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any person, the commission may permit such person to take credit against a subsequent tax report for the amount of the erroneous payment, or the amount may be refunded to the person in the same manner as provided in Section 27-55-19. No refunds shall be made under the provisions of this section unless a written claim is filed setting forth the circumstances by reason of which such refund should be allowed. Such claim shall be in such form as the commission shall prescribe and shall be filed with the commission within three (3) years from the date of payment of the taxes erroneously or illegally collected. Nothing in this chapter shall be construed to prohibit a refund or credit for tax paid on fuel tax reports not subject to tax or which is exempt from tax, provided there has not been a willful disregard of the provisions of this chapter and further provided that the claim is filed within three (3) years.

SOURCES: Laws, 2001, ch. 311, § 7, eff from and after passage (approved Mar. 5, 2001.)

Editor's Note — Laws of 2001, ch. 311, § 9, effective March 5, 2001, provides:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Gasoline tax exemptions, see § 27-55-19.

§ 27-61-35. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

Laws, 2001, ch. 311, § 8, eff from and after passage (approved Mar. 5, 2001.)

Editor's Note — Former §§ 27-61-35 provided for hearings and appeals from certain actions of the State Tax Commission.

CHAPTER 63

Motor Vehicle Fueling Centers [Repealed]

§§ 27-63-1 and 27-63-3. Repealed.

Repealed by Laws of 1988, ch. 465, § 10, effective from and after July 1, 1988.

§ 27-63-1. [Codes, 1942, § 10081-01; Laws, 1969 Ex Sess, ch. 61, § 1; Laws, 1982, ch. 438, § 16]

§ 27-63-3. [Codes, 1942, § 10081-02; Laws, 1969 Ex. Sess, ch. 61, § 2; Laws, 1981, ch. 468, § 69]

Editor's Note — Former § 27-63-1 related to persons who could qualify as fueling center.

Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§ 27-63-4. Repealed.

Repealed by Laws of 1995, ch. 364, § 6, effective from and after July 1, 1995.

[Laws, 1988, ch. 465, § 9]

Editor's Note — Former § 27-63-4 related to phasing out of motor vehicle fueling centers.

Laws of 1995, ch. 364, § 7, effective July 1, 1995, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 63 [Repealed], Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the aforesaid laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§§ 27-63-5 through 27-63-15. Repealed.

Repealed by Laws of 1988, ch. 465, § 10, effective from and after July 1, 1988.

§§ 27-63-5 through 27-63-7. [Codes, 1942, §§ 10081-03 and 10081-04; Laws, 1969 Ex Sess, ch. 61, § 3; Laws, 1981, ch. 468, §§ 70 and 71; Laws, 1981, ch. 468, §§ 70 and 71]

§§ 27-63-9 through 27-63-15. [Codes, 1942, §§ 10081-05 to 10081-07; Laws, 1969 Ex Sess, ch. 61, § 5]

Editor's Note — Former § 27-63-5 related to sales invoices generally.

Former § 27-63-7 related to sales invoices as evidence for tax credit.

Former § 27-63-9 related to penalties.

Former § 27-63-11 related to revocation of permits.

Former § 27-63-13 related to authority to make rules and regulations.

Former § 27-63-15 related to liabilities or penalties under former law.

Laws of 1988, ch. 465, § 11, effective July 1, 1988, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 61 and 63 [Repealed], Mississippi Code of 1972, prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1988, or for the filing of reports and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

CHAPTER 65

Sales Tax

In General 27-65-1
Tax on Sale of Motor Vehicle by Individual 27-65-201
Tribal Tax by Mississippi Band of Choctaw Indians 27-65-211
Tax on Rental of Motor Vehicles 27-65-231
Municipal Special Sales Tax 27-65-241

IN GENERAL

Sec.
27-65-1. Title of chapter.
27-65-3. Definitions.
27-65-5. Definitions; "Wholesaler, jobber or distributor"; "Wholesale sales."
27-65-7. Definitions; "Retailer"; "Retail sales."
27-65-9. Definitions; "Business"; "Doing business."
27-65-11. Definitions; "Manufacturer"; "Manufacturing"; "Remanufacturing"; "Custom"; "Repairs"; "Producer."
27-65-13. Tax levied.
27-65-15. Repealed.
27-65-16. Repealed.
27-65-17. Selling tangible personal property wholesale and retail.
27-65-17.1. Sellers of modular, panelized, and precut homes required to disclose to buyers amount of sales or use tax paid on factory built components of the homes.
27-65-18. Selling tangible personal property or performing construction upon certain floating structures and cruise vessels.
27-65-19. Public utilities.
27-65-20. Selling machinery, etc. used in operation of structures, facilities and land acquired and operated pursuant to Chapter 9, Title 59.
27-65-21. Contracting, etc.
27-65-22. Amusements.
27-65-23. Miscellaneous businesses.
27-65-23.1. Definition of hotel or motel for purposes of certain taxes levied under authority of local and private laws.
27-65-24. Sales of manufacturing or processing machinery to be installed and/or used at refinery; performance of construction activities at or in regard to refinery.
27-65-25. Sales of alcoholic beverages.
27-65-26. Selling, renting or leasing specified digital products.
27-65-27. Permit to engage in business.
27-65-29. Repealed.
27-65-31. Seller to collect tax.
27-65-33. Returns.
27-65-35. Failure to file return; notice.
27-65-37. Assessment of tax by commissioner.
27-65-39. Penalties for deficient or delinquent return.
27-65-40. Effect of state officer's or employee's failure to pay state sales tax.
27-65-41. Tax constitutes a debt.
27-65-42. Statute of limitations.
27-65-43. Taxpayer must keep records.
27-65-45 through 27-65-49. Repealed.

27-65-51. Disbursement from treasury to taxpayer.
27-65-53. Refunds.
27-65-55. Liability of seller and purchaser of business, certain stockholders of small business corporations and agents for out-of-state dealers.
27-65-57. Enrolling a judgment.
27-65-59. Warrant for collection of tax.
27-65-61. Jeopardy assessment and warrant.
27-65-63. Execution of warrant by sheriff or special agent; fees.
27-65-65. Commissioner may bid at sales.
27-65-67. Alias executions.
27-65-69. Sheriff and special agent not personally liable.
27-65-71. Enforcement not to be enjoined.
27-65-73. Sales tax as additional tax; remittances; how made.
27-65-75. Distribution of sales taxes, contractor taxes, motor fuels taxes, and other revenue collected under this chapter.
27-65-76. Repealed.
27-65-77. Repealed.
27-65-79. Records; preserved.
27-65-81. Returns confidential; release of certain information under certain circumstances.
27-65-83. Repealed.
27-65-85. Penalties for failure to comply with the chapter.
27-65-87. Administration of the chapter vested in the Commissioner of Revenue.
27-65-89. Employees appointed by commissioner.
27-65-91. Special agents designated by commissioner; authority.
27-65-93. Commissioner to make regulations.
27-65-95. Prior rights or actions not affected by this chapter.
27-65-97. Erroneous diversion of collected sales tax monies to municipality with population of 500 or less.
27-65-101. Exemptions; industrial [Paragraph (1)(pp) repealed effective July 1, 2022].
27-65-103. Exemptions; agricultural.
27-65-105. Exemptions; governmental.
27-65-107. Exemptions; utility.
27-65-109. Exemptions; taxes.
27-65-111. Exemptions; others.

§ 27-65-1. Title of chapter.

This chapter may be cited as the Mississippi Sales Tax Law.

SOURCES: Codes, 1942, § 10103; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1944, ch. 129, § 1; Laws, 1954, ch. 369; Laws, 1955 Ex Sess, ch. 109, § 1, eff March 1, 1955.

Cross References — Application of administrative provisions of this chapter in enforcement of commercial hazardous and nonhazardous waste disposal fees, see § 17-17-53.

Application of administrative provisions of this chapter in enforcement of nonhazardous solid waste fees, see § 17-17-219.

Application of this chapter in administration, collection and enforcement of waste tire fee, see § 17-17-423.

Application of administrative provisions of this chapter in enforcement of telephone subscriber service charges, see § 19-5-357.

Application of chapter in administration of City Utility Tax Law, see § 21-33-211.

Application of all administrative provisions of the state Sales Tax Law to all persons liable for taxes under the state estate tax law, see § 27-9-39.

Application of administrative provisions of the Sales Tax Law to collection of insurance premium taxes, see § 27-15-113.

Application of this chapter in enforcement proceedings to collect finance company privilege tax, see § 27-21-19.

Severance taxes, see § 27-25-1 et seq.

Vending and amusement machine taxes, see § 27-27-1 et seq.

Application of this chapter in enforcement and administration of the gasoline tax, see § 27-55-29.

Applicability of administration and enforcement provisions of this chapter to collection of tax on lubricating oils, see § 27-57-21.

Applicability of administration and enforcement provisions of the Sales Tax Law to tax on liquefied compressed gas, see § 27-59-37.

Application of all administrative provisions of the Sales Tax Law to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Applicability of administration and enforcement provisions of the Sales Tax Law to the interstate commercial carriers motor fuel tax, see § 27-61-11.

Permit to engage in business or activity subject to tax imposed by this chapter required, see § 27-65-27.

Tribal tax by Mississippi Band of Choctaw Indians, see §§ 27-65-211 through 27-65-221.

Use taxes, see § 27-67-1 et seq.

Salesmen's tax, see § 27-67-501 et seq.

Uniform Sales and Tax Use Administration Law, see § 27-68-1 et seq.

Applicability of chapter to occupancy tax levied for construction and maintenance of Mississippi Telecommunications Conference and Training Center, see § 31-31-11.

Application of administrative provisions of this chapter in enforcement of utility taxes, see § 77-3-87.

Application of administrative provisions of this chapter in enforcement of railroad taxes, see § 77-9-493.

Application of administrative provisions of this chapter in enforcement of municipal gas utility tax, see § 77-11-201.

Applicability of administration and enforcement provisions of Sales Tax Law to collection of tax on premiums for legal expense insurance, see § 83-49-45.

JUDICIAL DECISIONS

1. In general.

Federal and state excise taxes on the sale of gasoline are taxes against the producer. Gurley v. Rhoden, 288 So. 2d 868 (Miss. 1974), aff'd, 412 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

For the purpose of computing the state sales tax, federal and state excise taxes on the sale of gasoline are properly includable. Gurley v. Rhoden, 288 So. 2d 868 (Miss. 1974), aff'd, 412 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

Section 514 of the Soldiers' and Sailors' Civil Relief Act (50 USCS Appx § 574), exempting nonresident servicemen from state taxation in respect of personal property or the use thereof, does not prohibit a state from imposing its sales and use taxes on servicemen stationed there who are residents or domiciliaries of other states. Sullivan v. United States, 395 U.S. 169, 89 S. Ct. 1648, 23 L. Ed. 2d 182 (1969).

RESEARCH REFERENCES

ALR. Applicability of sales tax to judicial or bankruptcy sales. 27 A.L.R.2d 1219.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 1 et seq.

CJS. 53 C.J.S., Licenses §§ 50, 52.

Lawyers' Edition. Tax legislation as violating Federal Constitution's First Amendment — Supreme Court cases. 103 L. Ed. 2d 951.

§ 27-65-3. Definitions.

The words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them herein.

(a) "Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Person" means and includes any individual, firm, copartnership, joint venture, association, corporation, promoter of a temporary event, estate, trust or other group or combination acting as a unit, and includes the plural as well as the singular in number. "Person" shall include husband or wife, or both, where joint benefits are derived from the operation of a business taxed hereunder. "Person" shall also include any state, county, municipal or other agency or association engaging in a business taxable under this chapter.

(d) "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year.

(e) "Taxpayer" means any person liable for or having paid any tax to the State of Mississippi under the provisions of this chapter. A taxpayer is required to obtain a sales tax permit under Section 27-65-27 before engaging in business in this state. If a taxpayer fails to obtain a sales tax permit before engaging in business in this state, the taxpayer shall pay the retail rate on all purchases of tangible personal property and/or services in this state, even if purchased for resale. Upon obtaining a sales tax permit, a previously unregistered taxpayer shall file sales tax returns for all tax periods during which he engaged in business in this state without a sales tax permit, and report and pay the sales tax accruing from his operation during this period and any applicable penalties and interest. On such return, the taxpayer may take a credit for any sales taxes paid during the period he operated without a sales tax permit on a purchase that would have constituted a wholesale sale if the taxpayer had a sales tax permit at the time of the purchase and if proper documentation exists to substantiate a wholesale sale. This credit may also be allowed in any audit of the taxpayer. Any penalties and interest owed by the taxpayer on the return or in an audit for a period during which he operated without a sales tax permit may be determined based on the sales tax accruing from the taxpayer's operation for that period after the taking of this credit.

(f) "Sale" or "sales" includes the barter or exchange of property as well as the sale thereof for money or other consideration, and every closed transaction by which the title to taxable property passes shall constitute a taxable event.

"Sale" shall also include the passing of title to property for a consideration of coupons, trading stamps or by any other means when redemption is subsequent to the original sale by which the coupon, stamp or other obligation was created.

The situs of a sale for the purpose of distributing taxes to municipalities shall be the same as the location of the business from which the sale is made except that:

(i) Retail sales along a route from a vehicle or otherwise by a transient vendor shall take the situs of delivery to the customer.

(ii) The situs of wholesale sales of tangible personal property taxed at wholesale rates, the amount of which is allowed as a credit against the sales tax liability of the retailer, shall be the same as the location of the business of the retailer receiving the credit.

(iii) The situs of wholesale sales of tangible personal property taxed at wholesale rates, the amount of which is not allowed as a credit against the sales tax liability of the retailer, shall have a rural situs.

(iv) Income received from the renting or leasing of property used for transportation purposes between cities or counties shall have a rural situs.

(g) "Delivery charges" shall mean and include any expenses incurred by a seller in acquiring merchandise for sale in the regular course of business commonly known as "freight-in" or "transportation costs-in." "Delivery charges" also include any charges made by the seller for delivery of property sold to the purchaser.

(h) "Gross proceeds of sales" means the value proceeding or accruing from the full sale price of tangible personal property, including installation charges, without any deduction for delivery charges, cost of property sold, other expenses or losses, or taxes of any kind except those expressly exempt by this chapter.

"Gross proceeds of sales" includes consideration received by the seller from third parties if:

(i) The seller actually received consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One (1) of the following criteria is met:

1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party

will reimburse any seller to whom the coupon, certificate or documentation is presented;

2. The purchaser identified himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

3. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

Where a trade-in is taken as part payment on tangible personal property sold, "gross proceeds of sales" shall include only the difference received between the selling price of the tangible personal property and the amount allowed for a trade-in of property of the same kind. When the trade-in is subsequently sold, the selling price thereof shall be included in "gross proceeds of sales."

"Gross proceeds of sales" shall include the value of any goods, wares, merchandise or property purchased at wholesale or manufactured, and any mineral or natural resources produced, which are withdrawn or used from an established business or from the stock in trade for consumption or any other use in the business or by the owner. However, "gross proceeds of sales" does not include meals prepared by a restaurant and provided at no charge to employees of the restaurant or donated to a charitable organization that regularly provides food to the needy and the indigent and which has been granted exemption from the federal income tax as an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986.

"Gross proceeds of sales" shall not include bad check or draft service charges as provided for in Section 97-19-57.

"Gross proceeds of sales" does not include finance charges, carrying charges or any other addition to the selling price as a result of deferred payments by the purchaser.

(i) "Gross income" means the total charges for service or the total receipts (actual or accrued) derived from trades, business or commerce by reason of the investment of capital in the business engaged in, including the sale or rental of tangible personal property, compensation for labor and services performed, and including the receipts from the sales of property retained as toll, without any deduction for rebates, cost of property sold, cost of materials used, labor costs, interest paid, losses or any expense whatever.

"Gross income" shall also include the cost of property given as compensation when the property is consumed by a person performing a taxable service for the donor.

However, "gross income" or "gross proceeds of sales" shall not be construed to include the value of goods returned by customers when the total sale price is refunded either in cash or by credit, or cash discounts allowed and taken on sales. Cash discounts shall not include the value of trading stamps given with a sale of property.

(j) "Tangible personal property" means personal property perceptible to the human senses or by chemical analysis as opposed to real property or intangibles and shall include property sold on an installed basis which may become a part of real or personal property.

(k) "Installation charges" shall mean and include the charge for the application of tangible personal property to real or personal property without regard to whether or not it becomes a part of the real property or retains its personal property classification. It shall include, but not be limited to, sales in place of roofing, tile, glass, carpets, drapes, fences, awnings, window air-conditioning units, gasoline pumps, window guards, floor coverings, carports, store fixtures, aluminum and plastic siding, tombstones and similar personal property.

(*l*) "Newspaper" means a periodical which:

(i) Is not published primarily for advertising purposes and has not contained more than seventy-five percent (75%) advertising in more than one-half (½) of its issues during any consecutive twelve-month period excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues;

(ii) Has been established and published continuously for at least twelve (12) months;

(iii) Is regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively; provided, however, that publication on legal holidays of this state or of the United States and on Saturdays and Sundays shall not be required, and failure to publish not more than two (2) regular issues in any calendar year shall not exclude a periodical from this definition;

(iv) Is issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the periodical is printed and a newspaper shall be deemed to be "published" at the place where its known office of publication is located;

(v) Is formed of printed sheets; provided, however, that a periodical that is reproduced by the stencil, mimeograph or hectograph process shall not be considered to be a "newspaper"; and

(vi) Is originated and published for the dissemination of current news and intelligence of varied, broad and general public interest, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.

The term "newspaper" shall include periodicals which are designed primarily for free circulation or for circulation at nominal rates as well as those which are designed for circulation at more than a nominal rate.

The term "newspaper" shall not include a publication or periodical which is published, sponsored by, is directly supported financially by, or is published to further the interests of, or is directed to, or has a circulation restricted, in whole or in part, to any particular sect, denomination, labor or fraternal organization or other special group or class or citizens.

For purposes of this paragraph, a periodical designed primarily for free circulation or circulation at nominal rates shall not be considered to be a newspaper unless such periodical has made an application for such status to the department in the manner prescribed by the department and has provided to the department documentation satisfactory to the department showing that such periodical meets the requirements of the definition of the term "newspaper." However, if such periodical has been determined to be a newspaper under action taken by the department on or before April 11, 1996, such periodical shall be considered to be a newspaper without the necessity of applying for such status. A determination by the Department of Revenue that a publication is a newspaper shall be limited to the application of this chapter and shall not establish that the publication is a newspaper for any other purpose.

(m) "MPC" or "Material Purchase Certificate" means a certificate for which a person that is liable for the tax levy under Section 27-65-21 can apply and obtain from the commissioner, and when issued, entitles the holder to purchase materials and services that are to become a component part of a structure to be erected or repaired with no tax due. Any person taxable under Section 27-65-21 who obtains an MPC for a project and purchases materials and services in this state that are to become a component part of a structure being erected or repaired in the project and at any time pays sales tax on these purchases may, after obtaining the MPC for the project, take a credit against his sales taxes for the sales tax paid on these purchases if proper documentation exists to substantiate the payment of the sales tax on the purchase of component materials and services. This credit may also be allowed in any audit of the taxpayer. Any penalties and interest owed by the taxpayer on the return or in the audit where this credit is taken may be determined based on the sales tax due after the taking of this credit.

SOURCES: Codes, 1942, § 10104; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1944, ch. 129, § 1; Laws, 1946, ch. 262, § 1; Laws, 1948, ch. 467, § 1; Laws, 1950, ch. 530, § 1; Laws, 1954, ch. 369, § 2; Laws, 1955, Ex Sess, ch. 109, § 2; Laws, 1956, ch. 419, § 1; Laws, 1958, ch. 574, § 1; Laws, 1968, ch. 588, § 1; Laws, 1970, ch. 546, § 1; Laws, 1972, ch. 506, § 1; Laws, 1982, 1st Ex. Sess, ch. 17, § 32; brought forward, Laws, 1983, ch. 546, § 4; Laws, 1986, ch. 451, § 1; Laws, 1995, ch. 508, § 1; Laws, 1996, ch. 523, § 1; Laws, 1997, ch. 493, § 1; Laws, 2005, ch. 325, § 1; Laws, 2006, ch. 478, § 1; Laws, 2008, ch. 472, § 1; Laws, 2009, ch. 492, § 102; Laws, 2014, ch. 472, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 1997, ch. 493, § 2, effective March 27, 1997, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2006, ch. 478, § 2, effective July 1, 2006, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 472, § 4, effective July 1, 2014, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws or use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Total charge for "repair" or "maintenance" of property, as defined in § 27-65-11, to constitute gross income, see § 27-65-11.

Federal Aspects — Nonprofit organizations qualified as tax exempt under § 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

JUDICIAL DECISIONS

1. In general.

Chancery court properly granted a taxpayer's motion for summary judgment in its action to determine the sales tax due on certain items because, while a business owner was required to charge and collect 7% sales tax on tangible personal property sold "insofar as practicable," the taxpayer's responsibility of charging any sales tax at the time of the sale was obviated if a contractor provided a valid material purchase certificate. Miss. Dep't of Revenue v. Hotel & Rest. Supply, 192 So. 3d 942 (Miss. 2016).

Undisputed facts presented by the Mississippi Department of Revenue (MDOR) showed that an assessment was made against debtor for sales tax, that debtor failed to appeal the assessment to the MDOR's board of review, and that the MDOR recorded tax liens. Thus, the MDOR was entitled to a judgment as a matter of law that the indebtedness was nondischargeable in debtor's bankruptcy case. Cooper v. Miss. Dep't of Revenue (In re Cooper), — Bankr. —, 2015 Bankr. LEXIS 3261 (Bankr. S.D. Miss. Sept. 25, 2015).

Taxpayer's purchase of a boat in Florida was not subject to Mississippi use tax because (1) the Mississippi Department of Revenue showed no taxing authority, (2) the status of the purchase as a sale did not, alone, subject the purchase to a tax, (3) the taxpayer's use of a broker did not, alone, exclude the purchase as a casual sale, nor did the fact the purchase was nontaxable in Florida, and (4) the boat was not sold in the ordinary course of the broker's business, as the broker only sold marketing services. Castigliola v. Miss. Dep't of Revenue, 162 So. 3d 795 (Miss. 2015).

An Alabama carpet store did not avail itself of the substantial privilege of carrying on business within Mississippi, so that there was no constitutional basis for a sales tax assessment, where the store's 2 local carpet installers were independent contractors rather than agents or employees of the store, the local installers received no compensation from the store, and they provided their own equipment and were not subject to the control of the store in the details or final results of their work. Mississippi State Tax Comm'n v. Bates, 567 So. 2d 190 (Miss. 1990).

A transaction is "closed," for purposes of imposing sales tax, when title passes, which is usually the time of performance. Mississippi State Tax Comm'n v. Bates, 567 So. 2d 190 (Miss. 1990).

Taxpayers in the business of providing oil field services are required to include in gross income or total receipts the recovery of the costs of personal property used and consumed in providing the taxable service. McGowan v. Marx, 537 So. 2d 426 (Miss. 1988), mandate amended, 546 So. 2d 699 (Miss. 1988).

Where a hotel permitted its employees to eat surplus or left over victuals, it can safely be assumed that what is not eaten by the employees is to be cast away and that the cost of the food having already been integrated into the cost to consumers, the sales tax thereon has already presumably been paid. Hotel Markham, Inc. v. Stone, 214 Miss. 666, 59 So. 2d 308 (1952).

Where hotel gave the employees the privilege of eating surplus or left over victuals, the consumption of the food by employees was not property withdrawn or used from an established business or from the stock in trade. Hotel Markham, Inc. v. Stone, 214 Miss. 666, 59 So. 2d 308 (1952).

Where the statute failed to include in its definition of gross proceeds of sale the practice of giving the employees the privilege of consuming left over food, despite the assumed intent of the legislature to include the practice in its definition of gross proceeds of sales, the statute fails to do so with that degree of clarity which would make it immune to attack for uncertainty or ambiguity. Hotel Markham, Inc. v. Stone, 214 Miss. 666, 59 So. 2d 308 (1952).

A person engaged in a business which is defined by sales tax law is liable for retail sales tax on illegal sales of intoxicating liquors. Portera v. McLemore, 213 Miss. 659, 57 So. 2d 482 (1952).

In view of the definition of "gross proceeds of sale" the tax is levied without regard to profits. Stone v. Rogers, 186 Miss. 53, 189 So. 810 (1939).

RESEARCH REFERENCES

ALR. Reusable soft drink bottles as subject to sales or use taxes. 97 A.L.R.3d 1205.

Sales and use taxes on leased tangible personal property. 2 A.L.R.4th 859.

Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use taxes. 2 A.L.R.4th 1124.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption. 25 A.L.R.4th 750.

Sales and use taxes on sale or lease of mailing or customer list. 80 A.L.R.4th 1126.

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Forms 1 et seq. (sales taxes).

§ 27-65-5. Definitions; "Wholesaler, jobber or distributor"; "Wholesale sales."

"Wholesaler," "jobber" or "distributor" means a person doing a regularly organized wholesale or jobbing business, known to the trade as such, and selling to licensed retail dealers or other wholesalers for resale in the regular course of business. This classification has no bearing on rates of tax due under this chapter, each sale or part of sales being taxable or exempt depending upon the class in which it falls.

"Wholesale sales" shall apply to:

(1) A sale of tangible personal property taxable under Sections 27-65-17 and 27-65-25 for resale in the regular line of business, when made in good faith to a retailer regularly selling or renting that property and when the dealer is licensed under Section 27-65-27 of this chapter if located in this state.

A sale of a service taxable under Section 27-65-23 for resale in the regular line of business, when made to a regular dealer in that service and when the dealer is licensed under Section 27-65-27 of this chapter if located in this state, or a charge for custom processing rendered upon merchandise for resale or rental by a dealer licensed under Section 27-65-27.

A sale of telecommunications services taxable under Section 27-65-19 for resale in the regular course of business, when made to a regular telecommunications provider of the service and the provider is the holder of a permit issued under Section 27-65-27 and is located in this state or is providing telecommunications services in this state.

A sale of specified digital product taxable under Section 27-65-26 for resale in the regular course of business, when made to a regular dealer of specified digital products and the dealer is the holder of a permit issued under Section 27-65-27 and is located in this state.

"Wholesale sale" shall not include a transaction whereby property is delivered to, and collection for the transaction is made from, a person that will consume the property rather than resell it even though the billing is to a retailer.

However, when a taxpayer sells merchandise and has paid a rate equal to the retail rate of tax on the purchase price to a wholesaler, the taxpayer may take credit for the tax paid to the wholesaler from the tax due on the sale of the merchandise specifically included in his return to the commissioner.

(2) A sale of tangible personal property (except sand or gravel when sold by the producer thereof) or service which is to become a component part of a structure or improvement erected, constructed, repaired, or made only when the sale is made to a contractor taxable under Section 27-65-21 of this chapter on the contract in which the component materials are to be used; and

only when the contractor holds a material purchase certificate as required by Section 27-65-21 of this chapter.

(3) A sale of boxes, crates, cartons, cans, bottles and other packaging materials to a retailer or retail custom processor for use as a container to accompany goods or services sold by the retailer or custom processor where possession thereof will pass to the customer at the time of sale of the goods or services contained therein.

(4) The value of soft drinks and syrup withdrawn from the business by a manufacturer for sale at retail and food or drink withdrawn by a manufacturer or wholesaler to be sold through full service vending machines for human consumption.

The quantity of property or services sold or the price at which sold is immaterial in determining whether or not a sale is at wholesale. Sales may be classed as wholesale, or exempt, only if evidenced by proper and adequate records and invoices to substantiate the wholesale rate or exemption from the tax on each individual sale.

The substantiation of the wholesale sales must be by an invoice clearly indicating the date, the name and address of the vendor and vendee, the items sold and the price thereof. Such proof of wholesale sales shall be filed in chronological order and thus preserved for a period of three (3) years from the date of sale. These records shall be subject to inspection by the commissioner and his agents, at their discretion, for the verification of returns filed by either the wholesaler or his customers.

The substantiation of an exempt sale must be by an invoice containing the same information as required for the wholesale sales. This requirement shall apply equally to a retailer making wholesale or exempt sales.

Any failure to comply with all the above requirements shall subject the violator to the retail rate of tax on all such violations.

SOURCES: Codes, 1942, § 10104-01; Laws, 1954, ch. 369, § 3; Laws, 1955, Ex Sess, ch. 109, § 3; Laws, 1956, ch. 419, § 2; Laws, 1958, ch. 574, § 2; Laws, 1964, ch. 530, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 33; brought forward, Laws, 1983, ch. 546, § 5; Laws, 1986, ch. 451, § 2; Laws, 2002, ch. 520, § 2; Laws, 2009, ch. 332, § 2, eff from and after July 1, 2009.

Cross References — Tax imposed on sales of tangible personal property at wholesale and retail, see § 27-65-17.

Imposition of tax on miscellaneous businesses, see § 27-65-23.

§ 27-65-7. Definitions; "Retailer"; "Retail sales."

"Retailer" shall apply to a person making retail sales through vending machines, by maintaining a store, or operating as a transient vendor, or renting or leasing tangible personal property.

"Retail sales" shall mean and include all sales of tangible personal property except those defined herein as wholesale and those made to a wholesaler, jobber, manufacturer or custom processor for resale or for further processing.

"Retail sale" shall include the value of any tangible personal property manufactured or purchased at wholesale which is withdrawn from the business or stock in trade and is used or consumed within this state in the business or by the owner or by any other person, whether or not in the regular course of business or trade.

"Retail sale" shall also include a sale invoiced to a retailer but delivered to another person who pays for the merchandise upon taking possession.

SOURCES: Codes, 1942, § 10104-02; Laws, 1954, ch. 369, § 4; Laws, 1955, Ex Sess, ch. 109, § 4; Laws, 1958, ch. 574, § 3; Laws, 1964, ch. 530, § 2; Laws, 1982, 1st Ex Sess, ch. 17, § 34; brought forward, Laws, 1983, ch. 546, § 6; Laws, 2007, ch. 359, § 4, eff from and after July 1, 2007.

Cross References — "Wholesaler," "jobber" defined, see § 27-65-5.
"Manufacturer" defined, see § 27-65-11.

JUDICIAL DECISIONS

1. In general.

A retailer engaged in the sale of tile in an installed condition is a retailer of tangible personal property subject to the tax under Code 1942, § 10108, and the fact that he was paid by the job, charging only one price for both tile and installation, was immaterial. Mississippi State Tax Comm'n v. Hinton, 218 So. 2d 740 (Miss. 1969).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 67 et seq.

§ 27-65-9. Definitions; "Business"; "Doing business."

(1) "Business" shall mean and include all activities or acts engaged in (personal or corporate), for benefit or advantage, either direct or indirect, and not exempting subactivities in connection therewith. Each of such subactivities shall be considered business engaged in, taxable in the class in which it falls.

(2) "Business" shall include activities engaged in by exempt organizations or political entities in competition with privately owned business subject to the provisions of this chapter; however, the term "business" shall not include the following activities:

(a) Sales of prepaid student meal plans by public or private universities, colleges and community or junior colleges;

(b) Sales of prepared meals by any public or private school to students in kindergarten through Grade 12; and

(c) Retail sales of prepared meals when:

(i) Sold on the campus of a public or private university, college or community or junior college in this state to a student enrolled at such university, college or community or junior college; and

(ii) Payment for the sale is made through the use of a prepaid declining balance account or similar instrument or account issued to such student by the university, college or community or junior college that may be used only to purchase prepared meals.

(3) "Business" shall include the activity or activities of a person in this state performing a service under contract or agreement with another person when the service performed is taxable under the provisions of this chapter.

(4) "Doing business" shall include any person owning personal property located in this state under lease or rental agreement or any person installing personal property within this state.

(5) "Doing business" shall include any person represented in this state by salesmen taking or soliciting orders to be filled from points outside this state for subsequent delivery of the merchandise in equipment owned or leased by the seller to customers located in this state.

SOURCES: Codes, 1942, § 10104-03; Laws, 1954, ch. 369, § 5; Laws, 1955, Ex Sess, ch. 109, § 5; Laws, 1958, ch. 574, § 4; Laws, 2006, ch. 464, § 1; Laws, 2007, ch. 359, § 3; Laws, 2009, ch. 479, § 1, eff from and after passage (approved Mar. 31, 2009.)

Editor's Note — Laws of 2009, ch. 479, § 2, effective March 31, 2009, provides: "SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

JUDICIAL DECISIONS

1. In general.

An Alabama carpet store did not avail itself of the substantial privilege of carrying on business within Mississippi, so that there was no constitutional basis for a sales tax assessment, where the store's 2 local carpet installers were independent contractors rather than agents or employees of the store, the local installers received no compensation from the store, and they provided their own equipment and were not subject to the control of the store in the details or final results of their work. Mississippi State Tax Comm'n v. Bates, 567 So. 2d 190 (Miss. 1990).

A transaction is "closed," for purposes of imposing sales tax, when title passes, which is usually the time of performance. Mississippi State Tax Comm'n v. Bates, 567 So. 2d 190 (Miss. 1990).

An assessment for sales taxes was properly imposed on the gross proceeds received by an oil company from oil field services rendered by it as co-owner/operator for other co-owners of various oil and gas properties in the state, which proceeds represented charges to the other co-owners for their proportionate share of the cost incurred in providing the oil field services, including a reasonable fee for supervision, even though the oil company contended that its main business was discovering, producing and marketing oil, gas and minerals, that its services as an operator in conjunction with co-owners was incidental to its main business, and that it was not permitted to make a profit on its oil field services, where the company received a benefit in its operation as co-owner/operator in that it was able to develop, produce and market oil, gas and minerals in an efficient operation, which involved less expense and waste to it; such benefit and advantage came within the

§ 27-65-9 definition of business. Brady v. Getty Oil Co., 376 So. 2d 186 (Miss. 1979).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 71 et seq.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

§ 27-65-11. Definitions; "Manufacturer"; "Manufacturing"; "Remanufacturing"; "Custom"; "Repairs"; "Producer."

(a) "Manufacturer" means one who is exclusively or predominately engaged in the business of manufacturing as defined under the terms "to manufacture" or "manufacturing." A person who is engaged in manufacturing and nonmanufacturing activities may be classified as a manufacturer as to his manufacturing activities which are operated as a separate business or division.

(b) "To manufacture" or "manufacturing" embraces activities of an industrial or commercial nature wherein labor or skill is applied, by hand or machinery, to materials belonging to the manufacturer so that a new, different, or more useful article of tangible personal property or substance of trade or commerce or electric power is produced for sale or rental and includes the production or fabrication of special-made or custom-made articles for sale or rental. Activities of scrap metal recyclers that primarily convert material into a more useful product such as a specification-grade commodity, by processing the metal into separate types, removing waste material, and/or cutting, chipping, sorting, sizing or shaping the material into a usable product for sale such as a specification-grade commodity, shall be included in the terms "to manufacture" and "manufacturing."

"To manufacture" or "manufacturing" does not include activities such as cooking or preparing food or food products by a retailer in the regular course of retail trade; repairing and reconditioning property; the filling of prescriptions by a pharmacist; the washing or screening of mineral products; the cutting, hauling and decking of logs; or similar preparatory functions even when performed by a manufacturer. Activities of scrap metal recyclers that involve the gathering of recycled material and flattening, sorting, bundling or performing some other similar function solely to allow ease of transportation or storage and not to produce specification-grade commodities and/or the removal of parts for resale, shall not be included in the terms "to manufacture" and "manufacturing."

(c) "Remanufacturing" embraces activities of an industrial or commercial nature wherein labor or skill is applied by hand or machinery to materials, a portion of which may belong to the customer, so that rebuilt articles of tangible personal property, comparable in quality to new articles of the same property, are created, a majority of the value of which is produced by the remanufacturing activity.

(d) "Custom processor" means one who is exclusively or predominately engaged in the business of custom processing or remanufacturing as defined under the terms "custom processing" and "remanufacturing."

(e) "Custom processing" means the performance of a manufacturing service done or made to order upon the property of the customer and shall include laundering, cleaning and pressing, but shall not include "repairs" or "maintenance" as these terms are defined herein; nor self-service commercial laundering, drying, cleaning and pressing equipment.

(f) "Manufacturing machinery" shall mean and include that machinery owned or leased by a manufacturer or custom processor for use by said manufacturer or custom processor in his plant directly and exclusively in manufacturing tangible personal property for subsequent sale, rental or in custom processing for a fee. Motorized units, conveyors, track and track structures, conduits, and similar items for use in transporting the unfinished product from storage or from one phase of the manufacturing process to another may be classed as "manufacturing machinery."

"Manufacturing machinery" shall also include laboratory machinery which shall include X-ray machines and film, scales, chemical equipment, pressure and tensile analysis machines and similar equipment to determine the quality of the product in process of manufacture, and equipment used in the processing of waste materials to avoid air and water pollution, but only when located at the manufacturer's plant site.

Machinery used by a manufacturer to move, repair, clean, alter, improve, or otherwise recondition, rail rolling stock for sale or rental shall likewise constitute "manufacturing machinery."

"Manufacturing machinery" shall also include machinery and equipment used in the production of motion pictures such as editing equipment, audio equipment, lighting equipment, projection equipment, camera equipment, sound equipment, cables, computer equipment used in the editing process, computer equipment used in the creation of special effects, and computer equipment used in the graphic and animation process. For the purposes of this paragraph the term "motion picture" means a nationally distributed feature-length film, video, television series or commercial made in Mississippi, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include the production of television coverage of news and athletic events, or a film, video, television series or commercial that contains any material or performance defined in Section 97-29-103. Manufacturing machinery used in the production of motion pictures shall not be limited to a plant site.

"Manufacturing machinery" shall not include machinery for use in the hatching of baby chicks, the severance of timber, sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, maintenance or repair machinery, research laboratory machinery, storage warehouse machinery, equipment for protection of the plant or comfort of the personnel, or other equipment and supplies of like character. "Manufacturing machinery" does not include machine foundations or materials for their construction.

(g) "Machine parts" are component parts of manufacturing machinery and do not include parts for service equipment, nonmanufacturing machinery, fuels, lubricants, paints, or tools for maintenance.

(h) "Manufacturing plant" means the real and personal property owned or leased by a manufacturer which is assembled and used at a fixed location to perform activities defined as "manufacturing."

(i) "Repair," "repairs," or "maintenance" means the restoring of property in some measure to its original condition, which may involve the use of either personal property or labor or both, but, for the purposes of this chapter, the total charge for the service shall constitute gross income taxable in the class in which it falls.

(j) "Producer" means any person producing natural resource products or agricultural or horticultural products from the soil or water for sale.

SOURCES: Codes, 1942, § 10104-04; Laws, 1954, ch. 369, § 6; Laws, 1955, Ex Sess, ch. 109, § 6; Laws, 1958, ch. 574, § 5; Laws, 1965, ch. 22, § 1; Laws, 1978, ch. 532, § 1; Laws, 1980, ch. 501, § 2; Laws, 1981, ch. 328, § 1; Laws, 1985, ch. 516, § 1; Laws, 2004, ch. 528, § 5; Laws, 2013, ch. 469, § 1, eff from and after July 1, 2013.

Cross References — "Gross income" defined, see § 27-65-3.

JUDICIAL DECISIONS

1. In general.

In an action by a taxpayer to recover taxes paid as the result of an assessment upon sales of uniforms by the taxpayer to a company engaged in the business of renting uniforms and other items to its customers, but which admittedly made no sales of property, since the rental company was not a licensed retailer nor a manufacturer, wholesaler, or jobber within the meaning of the Sales Tax Law, the taxpayer was not entitled to recover under Chapter 529, Laws of 1950, providing that persons engaged in the business of selling manufactured products to manufacturers, wholesalers, jobbers or licensed retailers should not be liable for the tax imposed for the privilege of selling manufactured goods at wholesale. N. & W. Indus., Inc. v. McKeigney, 230 Miss. 566, 93 So. 2d 481 (1957).

A scrap metal dealer who pressed such metal into bales to specifications required by United States Department of Commerce and by the steel mills who purchased the bales, was a "processor" within the statute which provides that sales of tangible personal property to manufacturers or processors of machinery and machine parts which are exclusive necessities to processing within the state shall be construed to be wholesale sales, and the gross proceeds from such sales, and the gross proceeds from such sales, shall be taxable at the wholesale rate and therefore the exemption from the use tax, allowed in cases where property would have been taxed at wholesale rate applies to the machinery used by the scrap metal dealer. Stone v. Friedman, 219 Miss. 388, 68 So. 2d 473 (1953).

RESEARCH REFERENCES

ALR. Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

§ 27-65-13. Tax levied.

There is hereby levied and assessed, and shall be collected, privilege taxes for the privilege of engaging or continuing in business or doing business within this state to be determined by the application of rates against gross proceeds of sales or gross income or values, as the case may be, as provided in the following sections.

SOURCES: Codes, 1942, § 10105; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1955, Ex Sess, ch. 109, § 7, eff. March 1, 1955.

Cross References — Statewide privilege taxes, see § 27-15-1 et seq.

Local privilege taxes, see § 27-17-1 et seq.

Use taxes generally, see § 27-67-1 et seq.

Levy and collection of use taxes on tangible personal property, see §§ 27-67-5 through 27-67-7.

Salesmen's tax, see § 27-67-505.

JUDICIAL DECISIONS

1. In general.
2. Particular applications.

1. In general.

Any reasonable doubt as to whether the business done by the taxpayer can be detached in its main and essential feature as a local activity must be resolved in favor of taxpayer in connection with requirements that when the taxpayer is relying upon an exemption the claim of nonliability is to be clearly sustained under the proven facts in the light of the burden of proof resting upon the taxpayer to establish that the case comes within such exemption. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

The tax hereby imposed is an excise tax on business activity, not a tax on the property sold. Holcomb & Longino, Inc. v. Stone, 34 So. 2d 491 (Miss. 1948), error overruled, 35 So. 2d 82 (Miss. 1948).

Sales tax held not tax on property. Notgrass Drug Co. v. State ex rel. Rice, 175 Miss. 358, 165 So. 884 (1936).

Taxes levied under statute imposing tax on persons engaging or continuing in certain business held privilege or excise taxes and not property taxes. Southern Package Corp. v. State Tax Comm'n, 174 Miss. 212, 164 So. 45 (1935).

Constitutional provision as to uniformity applies only to ad valorem taxes, and not to privilege or excise taxes. Southern Package Corp. v. State Tax Comm'n, 174 Miss. 212, 164 So. 45 (1935).

2. Particular applications.

State's imposition of sales and use tax liability on religious organization's retail sale of religious materials, did not, under extant circumstances, violate free exercise of religion clause of First Amendment or result in excessive entanglement between government and religion thereby violating establishment clause. Jimmy Swaggart Ministries v. Board of Equalization, 493 U.S. 378, 110 S. Ct. 688, 107 L. Ed. 2d 796 (1990).

Taxpayers in the business of providing oil field services are required to include in gross income or total receipts the recovery of the costs of personal property used and consumed in providing the taxable service. McGowan v. Marx, 537 So. 2d 426 (Miss. 1988), mandate amended, 546 So. 2d 699 (Miss. 1988).

An assessment for sales taxes was properly imposed on the gross proceeds received by an oil company from oil field services rendered by it as co-owner/operator for other co-owners of various oil and gas properties in the state, which proceeds represented charges to the other co-owners for their proportionate share of the cost incurred in providing the oil field services, including a reasonable fee for supervision, even though the oil company contended that its main business was discovering, producing and marketing oil, gas and minerals, that its services as an operator in conjunction with co-owners was incidental to its main business, and that it was not permitted to make a profit on its oil field services, where the company received a benefit in its operation as co-owner/operator in that it was able to develop, produce and market oil, gas and minerals in an efficient operation, which involved less expense and waste to it; such benefit and advantage came within the § 27-65-9 definition of business. Brady v. Getty Oil Co., 376 So. 2d 186 (Miss. 1979).

A foreign corporation that transported automobiles from a city within the state to various dealers, both in and out of state, was properly taxed on the income received for the deliveries that were made to in-state dealers where that income was readily separable from income received for out-of-state deliveries. Complete Auto Transit, Inc. v. Brady, 330 So. 2d 268 (Miss. 1976), aff'd, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 2d 326 (1977), reh'g denied, 430 U.S. 976, 97 S. Ct. 1669, 52 L. Ed. 2d 371 (1977).

Telephone company held not liable for privilege tax measured by gross receipts from service charges, in respect of bills paid by governmental agencies to which tax was not added as a separate charge, where treated for rate-making purposes as an operating expense. Monaghan v. Southern Bell Tel. & Tel. Co., 242 Miss. 611, 136 So. 2d 198 (1962).

The gross income of the business or the gross proceeds of the sales upon which to compute the privilege tax upon a manufacturer, such as a lumber company, remains the same whether computed from sales in interstate commerce, sales of products exempt from sales tax, popularly so-called, or sales to the United States government, even though the gross income derived from such sales may be exempt from a tax thereon as sales. Stone v. Green Lumber Co., 191 Miss. 414, 1 So. 2d 764 (1941).

Course of conduct of ginner in giving receipt to farmer in the purchase of his cotton seed and in supplying him with cotton seed meal in return for such receipt, constituted a barter, taxable as a sale within the meaning of this section [Code 1942, § 10105], as against the contention that the ginner was the agent of the farmer to get cotton seed meal in exchange for his cotton seed. Stone v. Rogers, 186 Miss. 53, 189 So. 810 (1939).

RESEARCH REFERENCES

ALR. Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 A.L.R.2d 465.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase. 4 A.L.R.2d 244.

Computation of sales tax where property is turned in by purchaser. 4 A.L.R.2d 1059.

Sales tax on parts, repairs, or constituents used in repair of article. 11 A.L.R.2d 926.

Federal retail luxury or other exercise tax as includible in amount on which state sales or use tax is computed. 43 A.L.R.2d 862.

Redemption of trading stamps, etc., for merchandise as sale within taxing statute. 80 A.L.R.2d 1221.

Applicability of sales tax to "tips" or service charges added in lieu of tips. 73 A.L.R.3d 1226.

Computer software or printout transactions as subject to state sales or use tax. 91 A.L.R.3d 282.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 42 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Forms 1 et seq. (sales taxes).

§ 27-65-15. Repealed.

Repealed by Laws of 2006, ch. 458, § 1 effective from and after July 1, 2006.

[Codes, 1942, § 10106; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, Ex Sess, ch. 89; Laws, 1940, ch. 113; Laws, 1944, ch. 134, § 12; Laws, 1948, ch. 446, § 1; Laws, 1955, Ex Sess, ch. 109, § 8; Laws, 1962, ch. 594, § 9; Laws, 1964, ch. 531, § 1; Laws, 1968, ch. 588, § 2; Laws, 1981, ch. 525, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 35; Laws, 1983, ch. 413, § 1; Laws, 1983, 2nd Ex Sess, ch. 6, § 4; Laws, 1984, 1st Ex Sess, ch. 10, § 2; Laws, 1985, ch. 435, § 1; Laws, 1992, ch. 419, § 2, eff from and after June 1, 1992.]

Editor's Note — Former § 27-65-15 levied a tax upon every person engaging in the business of mining, quarrying, drilling or otherwise producing, or causing to be produced for sale, minerals except timber, oil, natural gas and salt.

§ 27-65-16. Repealed.

Repealed by Laws of 1979, ch. 436, § 2, effective from and after July 1, 1979.

[En Laws 1978, ch. 476, § 2]

Editor's Note — Former § 27-65-16 levied a tax of 5% of the gross proceeds of wholesale sales of tangible personal property, with certain exceptions, sold by means of transient vending, such tax to be paid in lieu of the tax payable under § 27-65-17.

§ 27-65-17. Selling tangible personal property wholesale and retail.

(1)(a) Except as otherwise provided in this section, upon every person engaging or continuing within this state in the business of selling any tangible personal property whatsoever there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross proceeds of the retail sales of the business.

(b) Retail sales of farm tractors and parts and labor used to maintain and/or repair such tractors shall be taxed at the rate of one and one-half percent (1-½%) when made to farmers for agricultural purposes.

(c)(i) Retail sales of farm implements sold to farmers and used directly in the production of poultry, ratite, domesticated fish as defined in Section 69-7-501, livestock, livestock products, agricultural crops or ornamental plant crops or used for other agricultural purposes, and parts and labor used to maintain and/or repair such implements, shall be taxed at the rate of one and one-half percent (1-½%) when used on the farm.

(ii) The one and one-half percent (1-½%) rate shall also apply to all equipment used in logging, pulpwood operations or tree farming, and parts and labor used to maintain and/or repair such equipment, which is either:

1. Self-propelled, or

2. Mounted so that it is permanently attached to other equipment which is self-propelled or permanently attached to other equipment drawn by a vehicle which is self-propelled.

In order to be eligible for the rate of tax provided for in this subparagraph (ii), such sales must be made to a professional logger. For the purposes of this subparagraph (ii), a "professional logger" is a person, corporation, limited liability company or other entity, or an agent thereof, who possesses a professional logger's permit issued by the Department of Revenue and who presents the permit to the seller at the time of purchase. The department shall establish an application process for a professional logger's permit to be issued, which shall include a requirement that the applicant submit a copy of documentation verifying that the applicant is certified according to Sustainable Forestry Initiative guidelines. Upon a determination that an applicant is a professional logger, the department shall issue the applicant a numbered professional logger's permit.

(d) Except as otherwise provided in subsection (3) of this section, retail sales of aircraft, automobiles, trucks, truck-tractors, semitrailers and manufactured or mobile homes shall be taxed at the rate of three percent (3%).

(e) Sales of manufacturing machinery or manufacturing machine parts when made to a manufacturer or custom processor for plant use only when the machinery and machine parts will be used exclusively and directly within this state in manufacturing a commodity for sale, rental or in processing for a fee shall be taxed at the rate of one and one-half percent (1-½%).

(f) Sales of machinery and machine parts when made to a technology intensive enterprise for plant use only when the machinery and machine parts will be used exclusively and directly within this state for industrial purposes, including, but not limited to, manufacturing or research and development activities, shall be taxed at the rate of one and one-half percent (1-½%). In order to be considered a technology intensive enterprise for purposes of this paragraph:

(i) The enterprise shall meet minimum criteria established by the Mississippi Development Authority;

(ii) The enterprise shall employ at least ten (10) persons in full-time jobs;

(iii) At least ten percent (10%) of the workforce in the facility operated by the enterprise shall be scientists, engineers or computer specialists;

(iv) The enterprise shall manufacture plastics, chemicals, automobiles, aircraft, computers or electronics; or shall be a research and development facility, a computer design or related facility, or a software publishing facility or other technology intensive facility or enterprise as determined by the Mississippi Development Authority;

(v) The average wage of all workers employed by the enterprise at the facility shall be at least one hundred fifty percent (150%) of the state average annual wage; and

(vi) The enterprise must provide a basic health care plan to all employees at the facility.

(g) Sales of materials for use in track and track structures to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission shall be taxed at the rate of three percent (3%).

(h) Sales of tangible personal property to electric power associations for use in the ordinary and necessary operation of their generating or distribution systems shall be taxed at the rate of one percent (1%).

(i) Wholesale sales of beer shall be taxed at the rate of seven percent (7%), and the retailer shall file a return and compute the retail tax on retail sales but may take credit for the amount of the tax paid to the wholesaler on said return covering the subsequent sales of same property, provided adequate invoices and records are maintained to substantiate the credit.

(j) Wholesale sales of food and drink for human consumption to full-service vending machine operators to be sold through vending machines located apart from and not connected with other taxable businesses shall be taxed at the rate of eight percent (8%).

(k) Sales of equipment used or designed for the purpose of assisting disabled persons, such as wheelchair equipment and lifts, that is mounted or attached to or installed on a private carrier of passengers or light carrier of property, as defined in Section 27-51-101, at the time when the private carrier of passengers or light carrier of property is sold shall be taxed at the same rate as the sale of such vehicles under this section.

(*l*) Sales of the factory-built components of modular homes, panelized homes and precut homes, and panel constructed homes consisting of structural insulated panels, shall be taxed at the rate of three percent (3%).

(m) Sales of materials used in the repair, renovation, addition to, expansion and/or improvement of buildings and related facilities used by a dairy producer shall be taxed at the rate of three and one-half percent (3-½%). For the purposes of this paragraph (m), "dairy producer" means any person engaged in the production of milk for commercial use.

(2) From and after January 1, 1995, retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101, shall be taxed an additional two percent (2%).

(3) A manufacturer selling at retail in this state shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in this section.

SOURCES: Codes, 1942, § 10108; Laws, 1932, chs. 90, 91; Laws, 1934, chs. 119, 122; Laws, 1946, ch. 343; Laws, 1948, ch. 467, § 2; Laws, 1950, ch. 529; Laws, 1955, Ex Sess, ch. 109, § 9; Laws, 1958, ch. 574, § 6; Laws, 1960, ch. 167, § 1; Laws, 1962, ch. 596, §§ 1, 3; Laws, 1962, ch. 597, §§ 1, 3; Laws, 1964, ch. 532, § 1; Laws, 1964, ch. 531, § 2; Laws, 1965, Ex Sess, ch. 22, § 2; Laws, 1968, ch. 588, § 3; Laws, 1972, ch. 506, § 3; Laws, 1978, ch. 512, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 36; Laws, 1983, ch. 546, § 1; Laws, 1983, 2nd Ex Sess, ch. 6, § 5; Laws, 1984, 1st Ex Sess, ch. 10, § 3; Laws, 1985, ch. 351, § 1; Laws, 1985, ch. 516, § 2; Laws, 1987, ch. 322, § 26; Laws, 1987, ch. 426, § 1; Laws, 1988, ch.

506, § 1; Laws, 1992, ch. 419, § 3; Laws, 1992, ch. 509, § 1; Laws, 1994, ch. 563, § 7; Laws, 1998, ch. 410, § 1; Laws, 1999, ch. 452, § 1; Laws, 2005, ch. 532, § 19; Laws, 2005, 3rd Ex Sess, ch. 1, § 63; Laws, 2006, 2nd Ex Sess, ch. 1, § 1; Laws, 2007, ch. 359, § 5; Laws, 2009, ch. 493, § 1; Laws, 2014, ch. 505, § 2, effective from and after July 1, 2014.

Editor's Note — Laws of 1999, ch. 452, § 3, effective July 1, 1999, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits, or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

Laws of 2009, ch. 493, §§ 2 and 5, effective July 1, 2009, provide as follows:

"SECTION 2. Nothing in Section 27-65-17 shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which Section 1 of this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"SECTION 5. Section 3 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. The remainder of this act shall take effect and be in force from and after July 1, 2009."

Laws of 2014, ch. 505, § 3, effective from and after July 1, 2014, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Taxation on miscellaneous businesses, see § 27-65-23.

Collection of tax by seller, see § 27-65-31.

Revenues imposed and levied as a result of this section to be disbursed to the Motor Vehicle Ad Valorem Tax Reduction Fund, see § 27-65-35.

Distribution of tax collected, see § 27-65-75.

Payment of sales tax directly to the commissioner under permits issued to manufacturers, utilities, and construction contractors, making purchases, see § 27-65-93.

Industrial exemptions from sales tax, see § 27-65-101.

Agricultural exemptions from sales tax, see § 27-65-103.

Governmental exemptions from sales tax, see § 27-65-105.

Utility exemptions from sales tax, see § 27-65-107.

Other exemptions from sales tax, see § 27-65-111.

Tax upon sale or use of motor vehicles, see § 27-65-201.

Use taxes generally, see § 27-67-1 et seq.

Levy and collection of use taxes on tangible personal property, see §§ 27-67-5 through 27-67-7.

Mississippi Development Authority generally, see § 57-1-1 et seq.

Requirement that county maintain roads as a unit to be eligible to receive funds allocated by this section, see § 65-9-17.

Mississippi Public Service Commission generally, see § 77-3-1 et seq.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, generally.
3. Particular applications.

1. Validity.

The tax imposed by this section [Code 1942, § 10108] is not a property tax, does not constitute double taxation, and does not violate the equal and uniform clauses of the state and federal constitutions. Harry D. Kantor & Son v. Stone, 203 Miss. 260, 34 So. 2d 492 (1948).

Statute imposing tax on sales of retail merchants and requiring them to collect tax from customers does not violate due process. State ex rel. Rice v. Allen, 180 Miss. 659, 177 So. 763 (1938).

Statute imposing tax on sales of retail merchants held within authority of legislature to levy as not being a tax on property. Notgrass Drug Co. v. State ex rel. Rice, 175 Miss. 358, 165 So. 884 (1936).

2. Construction and application, generally.

Taxpayer did not have the burden to prove a casual-sale tax exemption for buying a boat in Florida because this exception was an exclusion and not an exemption, so the Mississippi Department of Revenue had to prove the power to tax the transaction. Castigliola v. Miss. Dep't of Revenue, 162 So. 3d 795 (Miss. 2015).

For purposes of this section, providing for a sales tax on all personal property sold in Mississippi, including trucks, a "truck" is a self-propelled motor vehicle built for the transportation of freight or cargo on its own chassis. Lambert v. Ogden, 423 So. 2d 1319 (Miss. 1982).

This statute must be liberally construed in favor of person sought to be charged with such taxes, and strictly construed as against claim of state for such taxes, and before one is held liable for taxes he must come within its express provisions. Stone v. M.L. Virden Lumber Co., 205 Miss. 841, 39 So. 2d 498 (1949).

The tax imposed by this section [Code 1942, § 10108] is not upon casual or isolated property but is upon one engaged in the business of selling such property, the word "business" implying an employment or occupation that is continuing. Harry D. Kantor & Son v. Stone, 203 Miss. 260, 34 So. 2d 492 (1948).

This section [Code 1942, § 10108] is neither ambiguous nor uncertain, delegates administrative and not judicial duties to the state tax commissioner, and that it may not have been heretofore enforced does not relieve any taxpayer of the tax imposed by it. Harry D. Kantor & Son v. Stone, 203 Miss. 260, 34 So. 2d 492 (1948).

The mere fact that one business is an incident of another does not relieve it from taxation under this statute [Code 1942, § 10108] if it is of a continuing nature. Harry D. Kantor & Son v. Stone, 203 Miss. 260, 34 So. 2d 492 (1948).

3. Particular applications.

Chancery court properly granted a taxpayer's motion for summary judgment in its action to determine the sales tax due on certain items because, while a business owner was required to charge and collect 7% sales tax on tangible personal property sold "insofar as practicable," the taxpayer's responsibility of charging any sales tax at the time of the sale was obviated if a contractor provided a valid material purchase certificate. Miss. Dep't of Revenue v. Hotel & Rest. Supply, 192 So. 3d 942 (Miss. 2016).

Bankruptcy debtor was liable for sales taxes as assessed by a state tax agency since the debtor engaged in business activities involving servicing and installing air conditioning and refrigeration units, the debtor failed to preserve invoices, the agency assessed the taxes based on available information, and the debtor failed to show that bank deposits were loans to rebut the presumption that the agency's assessment was correct. Blalock v. Miss. Dep't of Rev. (In re Blalock), 537 B.R. 284 (Bankr. S.D. Miss. 2015).

In a taxation dispute, a chancellor erred by vacating a decision from the Mississippi Department of Revenue (MDOR) that an airplane dealership had to pay a use tax, which was the same as the sales-tax rate, where substantial documentary evidence supported the conclusions that the dealership had been using for charters the airplanes that it was trying to sell. This determination was outside of the chancery court's appellate purview, which was limited to deciding if the MDOR's decision was supported by substantial evidence or was arbitrary and capricious. Miss. Dep't of Revenue v. Johnny Reb Aviation, LLC, 167 So. 3d 1266 (Miss. Ct. App. 2014), writ of certiorari denied en banc by 168 So. 3d 962, 2015 Miss. LEXIS 356 (Miss. July 2, 2015).

The term "mobile home" in this section which provides that a 3 percent sales tax shall be charged on the sale of "mobile homes" and 6 percent on other sales, pertains to the construction of the mobile unit rather than its end use; thus, a 3 percent sales tax applied to mobile units that were constructed in the same manner as other mobile homes but were to be used for commercial use as offices or businesses. Marx v. R & W Custom Bldrs., Inc., 624 So. 2d 102 (Miss. 1993).

The portion of a "workover rig" which was used to haul specialized equipment mounted thereon was a "truck" within the meaning of this section and was therefore taxable at three percent; the mounted specialized equipment however was tangible personal property and was taxable at five percent. Lambert v. Ogden, 423 So. 2d 1319 (Miss. 1982).

The denial of the deduction of state and federal gasoline excise taxes in computing the gross proceeds of retail sales of gasoline for purposes of the state sales tax is not unconstitutional. Gurley v. Rhoden, 421 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

Seismographic exploratory vessels specially constructed for the sole purpose of doing geophysical work, which could be used for no other purpose without extensive overhauling, were not engaged in the interstate transportation business within the exemption under the statute imposing a sales tax, and the sales of petroleum products to such vessels were subject to sales tax. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

A retailer engaged in the sale of tile in an installed condition is a retailer of tangible personal property subject to the tax under Code 1942, § 10108, and the fact that he was paid by the job, charging only one price for both tile and installation, was immaterial. Mississippi State Tax Comm'n v. Hinton, 218 So. 2d 740 (Miss. 1969).

The use of strong methods by collector to collect from delinquent taxpayers penalties on sale of intoxicating liquor was not discrimination against such delinquents where such force was not necessary and not used to secure payment by others. Bishop v. Bailey, 209 Miss. 892, 48 So. 2d 588 (1950).

Declaration stating that three sales of real estate upon which sales tax was levied under this section [Code 1942, § 10108] were merely casual sales and only incidental to plaintiff's main business of wholesale and retail dealer in lumber and building supplies states good case for recovery of taxes paid for which judgment is correctly awarded on stipulation between parties that pleadings be taken and considered as stipulation of fact. Stone v. M.L. Virden Lumber Co., 205 Miss. 841, 39 So. 2d 498 (1949).

In determining whether lumber company dealing in building supplies, materials and equipment at wholesale and retail is also engaged in business of selling real estate and liable for sales tax on real estate sales under this section [Code 1942, § 10108], the question is not how many sales of real estate are made in given period of time, but whether these sales are mere incident to company's major business, and whether company is in fact engaged in real estate business. Stone v. M.L. Virden Lumber Co., 205 Miss. 841, 39 So. 2d 498 (1949).

General building contractors, forced as a business expediency in order to continue their construction business, to buy real property for the construction thereon of houses for sale to veterans, were subject to tax on sales of realty as engaged in business under this section [Code 1942, § 10108], notwithstanding contention that such business was merely incidental to their main business. Harry D. Kantor & Son v. Stone, 203 Miss. 260, 34 So. 2d 492 (1948).

A general real estate and insurance firm ordinarily doing business on a commission basis was not exempt from paying tax on the sale of real estate owned by it which had been purchased for resale purposes, on the ground that the realty had been purchased and sold by it as an advertising scheme merely incidental to its regular business on a commission basis. Holcomb & Longino, Inc. v. Stone, 34 So. 2d 491 (Miss. 1948), error overruled, 35 So. 2d 82 (Miss. 1948).

A firm whose main business is that of a dealer in lumber, building materials and supplies cannot be required to pay a sales tax on the sale of three lots which was merely incidental to its business. M.L. Virden Lumber Co. v. Stone, 203 Miss. 251, 33 So. 2d 841 (1948).

ATTORNEY GENERAL OPINIONS

A motor home, which is self-propelled, is a motor vehicle as defined by Section 27-19-3(3) and it is also considered a private carrier of passengers as defined in Section 27-19-3(22). Thus, motor homes would be subject to the additional two percent (2%) tax imposed by subsection (2) of this section. Pace, June 15, 1995, A.G. Op. #95-0222.

RESEARCH REFERENCES

ALR. Employee's acquisition of employer's commodities at discount or without cost as within sales or gross income tax statute. 1 A.L.R.2d 1020.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase. 4 A.L.R.2d 244.

Computation of sales tax where property is turned in by purchaser. 4 A.L.R.2d 1059.

Sales tax on parts, repairs, or constituents used in repair of article. 11 A.L.R.2d 926.

Sale by wholly owned subsidiary to parent or vice versa, as within retailer's occupation or sales tax. 64 A.L.R.2d 769.

Computer software or printout transactions as subject to state sales or use tax. 91 A.L.R.3d 282.

Sales and use taxes on leased tangible personal property. 2 A.L.R.4th 859.

Applicability of sales or use taxes to motion pictures and video tapes. 10 A.L.R.4th 1209.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 64 et seq.

CJS. 53 C.J.S., Licenses §§ 78, 79.

§ 27-65-17.1. Sellers of modular, panelized, and precut homes required to disclose to buyers amount of sales or use tax paid on factory built components of the homes.

Sellers of modular homes, panelized homes and precut homes, and panel constructed homes consisting of structural insulated panels, shall disclose to the buyers of such homes the amount of sales tax or use tax paid on the factory built components of such homes. The State Tax Commission shall prescribe by regulation the manner in which such disclosure shall be made.

SOURCES: Laws, 2006, 2nd Ex Sess, ch. 1, § 2, eff from and after passage (approved Oct. 5, 2006).

§ 27-65-18. Selling tangible personal property or performing construction upon certain floating structures and cruise vessels.

(1) There is levied, assessed and shall be collected a tax of three and one-half percent (3-½%) upon the gross proceeds of sales or gross receipts of sales of every person engaging or continuing within this state in the business of selling any tangible personal property or performing any construction activity upon (a) any floating structure that is normally moored and not normally engaged in the business of transporting people or property, and that is located in the waters within the State of Mississippi, and (b) any cruise vessel. Such structures include, but are not limited to, casinos, floating restaurants, floating hotels and similar property, regardless of whether the property is self-propelled. The tax imposed under this subsection (1) shall not apply to tangible personal property that is not a component part of the structure.

(2) If the owner of a structure described in subsection (1) of this section holds a direct pay permit issued by the State Tax Commission under Section 27-65-93, the owner shall furnish the permit to the seller or person performing the construction activity unless the holder of the direct pay permit is given written instructions or written authority to do otherwise by the commissioner. After being furnished the direct pay permit, the seller or person performing the construction activity shall be relieved of the duty to collect the tax imposed under subsection (1) of this section. The commissioner may assign a distinctive number to a structure and issue the distinctive number to the owner. The owner of the structure may furnish the distinctive number to persons performing construction activity in order to allow such persons to purchase component materials and parts for use in the construction activity without the requirement of paying sales tax on the purchases.

SOURCES: Laws, 1996, ch. 503, § 1; Laws, 2004, ch. 351, § 1; Laws, 2007, ch. 468, § 1, eff from and after passage (approved Mar. 26, 2007.)

Editor's Note — A prior § 27-65-18 [En, Laws of 1976, ch. 391, § 1] was repealed by Laws of 1982, Ex Sess, ch. 17, § 42, effective from and after January 1, 1987. That section contained provisions relating to a permit for "leasing dealer."

Laws of 1976, ch. 391, §§ 2 and 3, provide as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Sections 27-65-1 through 27-65-95, as amended, prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective, or shall thereafter be begun; and provisions of Sections 27-65-1 through 27-65-95, as amended, are expressly continued in full force, effect, and operation for the purpose of the assessment and collection of any taxes due or accrued under said Sections 27-65-1 through 27-65-95, and amendments thereto, prior to the date on which this act becomes effective and for the imposition of any penalties, forfeitures or claims for a failure to comply therewith.

"SECTION 3. It is the express intention of the Legislature that this act be designated a separate section of the Mississippi Sales Tax Law, being Title 27, Chapter 65, Mississippi Code of 1972."

Laws of 1996, ch. 503, §§ 4 and 5, effective July 1, 1996, provide as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax or use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax or use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"SECTION 5. Sections 1 and 3 of this act shall not apply to construction under a contract executed prior to July 1, 1996."

Laws of 2007, ch. 468, § 2, effective March 26, 2007, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Payment of sales tax directly to the commissioner under permits issued to manufacturers, utilities and construction contractors making purchases, see § 27-65-93.

Levy and collection of use taxes on tangible personal property, see §§ 27-67-5 through 27-67-7.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 189.

CJS. 84 C.J.S., Taxation § 146.

85 C.J.S., Taxation §§ 1109-1119, 1816.

§ 27-65-19. Public utilities.

(1)(a)(i) Except as otherwise provided in this subsection, upon every person selling to consumers, electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business. Provided, gross income from sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use, and sales of potable water for residential, noncommercial or nonagricultural use shall be excluded from taxable gross income of the business. Provided further, upon every such seller using electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel for nonindustrial purposes, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the cost or value of the product or service used.

(ii) Gross income from sales to a church that is exempt from federal income taxation under 26 USCS Section 501(c)(3) of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for heating, lighting or other use, and sales of potable water to such a church shall be excluded from taxable gross income of the business if the electricity, current, power, natural gas, liquefied petroleum gas or potable water is utilized on property that is primarily used for religious or educational purposes.

(b)(i) There is hereby levied, assessed and shall be collected a tax equal to one and one-half percent (1-½%) of the gross income of the business from the sale of naturally occurring carbon dioxide and anthropogenic carbon dioxide lawfully injected into the earth for:

1. Use in an enhanced oil recovery project, including, but not limited to, use for cycling, repressuring or lifting of oil; or

2. Permanent sequestration in a geological formation.

(ii) The one and one-half percent (1-½%) rate provided for in this subsection shall apply to electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel that is sold to a producer of oil and gas for use directly in enhanced oil recovery using carbon dioxide and/or the permanent sequestration of carbon dioxide in a geological formation.

(c) The one and one-half percent (1-½%) rate provided for in this subsection shall not apply to sales of fuel for automobiles, trucks, truck-tractors, buses, farm tractors or airplanes.

(d)(i) Upon every person providing services in this state, there is hereby levied, assessed and shall be collected:

1. A tax equal to seven percent (7%) of the gross income received from all charges for intrastate telecommunications services.

2. A tax equal to seven percent (7%) of the gross income received from all charges for interstate telecommunications services.

3. A tax equal to seven percent (7%) of the gross income received from all charges for international telecommunications services.

4. A tax equal to seven percent (7%) of the gross income received from all charges for ancillary services.

5. A tax equal to seven percent (7%) of the gross income received from all charges for products delivered electronically, including, but not limited to, software, music, games, reading materials or ring tones.

(ii) A person, upon proof that he has paid a tax in another state on an event described in subparagraph (i) of this paragraph (d), shall be allowed a credit against the tax imposed in this paragraph (d) on interstate telecommunications service charges to the extent that the amount of such tax is properly due and actually paid in such other state and to the extent that the rate of sales tax imposed by and paid in such other state does not exceed the rate of sales tax imposed by this paragraph (d).

(iii) Charges by one (1) telecommunications provider to another telecommunications provider holding a permit issued under Section 27-

65-27 for services that are resold by such other telecommunications provider, including, but not limited to, access charges, shall not be subject to the tax levied pursuant to this paragraph (d).

(iv) For purposes of this paragraph (d):

1. "Telecommunications service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between points. The term "telecommunications service" includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. The term "telecommunications service" shall not include:

a. Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

b. Installation or maintenance of wiring or equipment on a customer's premises;

c. Tangible personal property;

d. Advertising, including, but not limited to, directory advertising;

e. Billing and collection services provided to third parties;

f. Internet access service;

g. Radio and television audio and video programming services regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 USCS 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

h. Ancillary services; or

i. Digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ring tones.

2. "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service and voice mail service.

a. "Conference bridging" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging does not include the telecommunications services used to reach the conference bridge.

b. "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

c. "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

d. "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

e. "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

3. "Intrastate" means telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession.

4. "Interstate" means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in a different United States state or United States territory or possession.

5. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively.

(v) For purposes of paragraph (d), the following sourcing rules shall apply:

1. Except for the defined telecommunications services in item 3 of this subparagraph, the sales of telecommunications services sold on a call-by-call basis shall be sourced to:

a. Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or

b. Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

2. Except for the defined telecommunications services in item 3 of this subparagraph, a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

3. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

a. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service is sourced to the customer's place of primary use as required by the Mobile Telecommunication Sourcing Act.

A. A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. The home service provider shall be entitled to rely on the applicable residential or business street address supplied by such customer, if the home service provider's reliance is in good faith; and the home service provider shall be held harmless from liability for any additional taxes based on a different determination of the place of primary use for taxes that are customarily passed on to the customer as a separate itemized charge. A home service provider shall be allowed to treat the address used for purposes of the tax levied by this chapter for any customer under a service contract in effect on August 1, 2002, as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement. Month-to-month services provided after the expiration of a contract shall be treated as an extension or renewal of such contract or agreement.

B. If the commissioner determines that the address used by a home service provider as a customer's place of primary use does not meet the definition of the term "place of primary use" as defined in subitem a.A. of this item 3, the commissioner shall give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination; however, the customer shall have the opportunity, prior to such notice of determination, to demonstrate that such address satisfies the definition.

C. The department has the right to collect any taxes due directly from the home service provider's customer that has failed to provide an address that meets the definition of the term "place of primary use" which resulted in a failure of tax otherwise due being remitted.

b. A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

A. The seller's telecommunications system; or

B. Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. A sale of a prepaid calling service or prepaid wireless calling service shall be subject to the tax imposed by this paragraph if the sale takes place in this state. If the customer physically purchases a prepaid calling service or prepaid wireless calling service at the vendor's place of business, the sale is deemed to take place at the vendor's place of business. If the customer does not physically purchase the service at the vendor's place of business, the sale of a prepaid calling card or prepaid wireless calling card is deemed to take place at the first of the following locations that applies to the sale:

A. The customer's shipping address, if the sale involves a shipment;

B. The customer's billing address;

C. Any other address of the customer that is known by the vendor; or

D. The address of the vendor, or alternatively, in the case of a prepaid wireless calling service, the location associated with the mobile telephone number.

4. A sale of a private communication service is sourced as follows:

a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

b. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

c. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

d. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

5. A sale of ancillary services is sourced to the customer's place of primary use.

(vi) For purposes of subparagraph (v) of this paragraph (d):

1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

2. "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

4. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

5. "Customer channel termination point" means the location where the customer either inputs or receives the communications.

6. "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

7. "Home service provider" has the meaning ascribed to such term in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

8. "Mobile telecommunications service" has the meaning ascribed to such term in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

9. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

10. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunications service.

11. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

12. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary service, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

13. "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of such channel or channels.

14. "Service address" means:

a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

b. If the location in subitem a of this item 14 is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. If the location in subitems a and b of this item 14 are not known, the location of the customer's place of primary use.

(vii)1. For purposes of this subparagraph (vii), "bundled transaction" means a transaction that consists of distinct and identifiable properties or services which are sold for a single nonitemized price but which are treated differently for tax purposes.

2. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, or audio or video programming services taxed under this chapter in which the price of the bundled transaction is attributable to properties or services that are taxable and nontaxable, the portion of the price that is attributable to any nontaxable property or service shall be subject to the tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business.

3. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, audio or video programming services subject to tax under this chapter in which the price is attributable to properties or services that are subject to the tax but the tax revenue from the different properties or services are dedicated to different funds or purposes, the provider shall allocate the price among the properties or services:

a. By reasonably identifying the portion of the price attributable to each of the properties and services from its books and records kept in the regular course of business; or

b. Based on a reasonable allocation methodology approved by the department.

4. This subparagraph (vii) shall not create a right of action for a customer to require that the provider or the department, for purposes of determining the amount of tax applicable to a bundled transaction, allocate the price to the different portions of the transaction in order to minimize the amount of tax charged to the customer. A customer shall not be entitled to rely on the fact that a portion of the price is attributable to properties or services not subject to tax unless the provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identifies the portion of the price attributable to the properties or services not subject to the tax.

(2) Persons making sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use or sales of

potable water for residential, noncommercial or nonagricultural use shall indicate on each statement rendered to customers that such charges are exempt from sales taxes.

(3) There is hereby levied, assessed and shall be paid on transportation charges on shipments moving between points within this state when paid directly by the consumer, a tax equal to the rate applicable to the sale of the property being transported. Such tax shall be reported and paid directly to the Department of Revenue by the consumer.

SOURCES: Codes, 1942, § 10109; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1944, ch. 129, § 2; Laws, 1955, Ex Sess, ch. 109, § 10; Laws, 1956, ch. 419, § 3; Laws, 1958, ch. 574, § 7; Laws, 1964, ch. 531, § 3; Laws, 1968, ch. 588, § 4; Laws, 1972, ch. 506, § 2; Laws, 1978, ch. 490, §§ 1, 2; Laws, 1979, ch. 302, § 7; Laws, 1982, Ex Sess, ch. 17, § 37; Laws, 1983, 2nd Ex Sess, ch. 6, § 6; Laws, 1984, 1st Ex Sess, Ch. 10, § 4; Laws, 1985, ch. 351, § 2; Laws, 1992, ch. 419, § 4; Laws, 1993, ch. 473, § 1; Laws, 1997, ch. 536, § 2; Laws, 1998, ch. 519, § 1; Laws, 2000, ch. 303, § 6; Laws, 2001, ch. 464, § 1; Laws, 2002, ch. 520, § 1; Laws, 2004, ch. 306, § 1; Laws, 2005, 3rd Ex Sess, ch. 1, § 64; Laws, 2006, ch. 461, § 1; Laws, 2007, ch. 329, § 1; Laws, 2009, ch. 475, § 1; Laws, 2012, ch. 507, § 1; Laws, 2013, ch. 310, § 1; Laws, 2013, ch. 537, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference. The reference in (1)(e)(v)3.a.B to "the paragraph" was changed to "sub-item a.A of this item 3" so that "as defined in the paragraph" reads "as defined in sub-item a.A of this item 3." The Joint Committee ratified this correction at its August 5, 2008, meeting.

Section 1 of Chapter 310, Laws of 2013, effective from and after July 1, 2013 (approved March 7, 2013), amended this section. Section 2 of Chapter 537, Laws of 2013, effective from and after July 1, 2014 (approved April 23, 2013), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 537, Laws of 2013, which contains language that specifically provides that it supersedes § 27-65-19 as amended by Chapter 310, Laws of 2013.

Editor's Note — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws"

Laws of 2000, ch. 303, §§ 11 and 12, effective July 1, 2000, provide:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect.

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Laws of 2001, ch. 464, § 2, effective March 23, 2001, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws amended by this act prior to the date on which such amendments become effective whether such assessments, appeals, suits, claims or actions have been begun before the date on which such amendments become effective or begun thereafter, and the provisions of sales tax laws are expressly continued in full force, effect and operation for the purposes of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws prior to the date on which such amendments become effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2002, ch. 520, § 5 effective July 1, 2002, provides that §§ 1 and 4 of the act shall apply only to customer bills issued after August 1, 2002.

Laws of 2004, ch. 306 § 2, effective July 1, 2004, provides:

"SECTION 2. This act shall be effective with respect to services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2004, regardless of when such services are provided."

Laws of 2009, ch. 475, § 2, effective July 1, 2009, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2012, ch. 507, § 2, effective from and after July 1, 2012, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2013, ch. 310, § 2, effective July 1, 2013, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective [July 1, 2013], whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2013, ch. 537, § 6, as amended by Laws of 2014, ch. 530, § 41, effective July 1, 2014, provides:

"SECTION 6. (1) Except as otherwise provided in subsection (2) of this section, nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"(2) The exemptions authorized in Section 1 of this act shall apply to all sales billed by the provider from and after July 1, 2014."

Cross References — City utility tax law, see §§ 21-33-201 et seq.

Tax exemption of commodities in interstate commerce, see § 27-31-13.

Gasoline and motor fuel taxes, see § 27-55-1 et seq.

Liquefied compressed gas tax, see § 27-59-1 et seq.

Collection of tax, see § 27-65-31.

Distribution of taxes collected, see § 27-65-75.

Governmental exemptions from sales tax, see § 27-65-105.

Utility exemptions from sales tax, see § 27-65-107.

Other exemptions from sales tax, see § 27-65-111.

Use taxes generally, see § 27-67-1 et seq.

Levy and collection of use taxes on tangible personal property, see §§ 27-67-5 through 27-67-7.

Motor carriers, generally, see § 77-7-1 et seq.

Federal Aspects — Mobile Telecommunications Sourcing Act generally, see 4 USCS §§ 116 through 126.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

The tax imposed by this section upon the privilege of doing business in state when applied to interstate activity (transportation by a motor carrier in Mississippi to Mississippi dealers of automobiles manufactured outside Mississippi) did not violate the Commerce Clause where there was a substantial nexus with the taxing state, and where the tax was fairly apportioned, did not discriminate against interstate commerce, and was fairly related to services provided by the state. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 2d 326 (1977), reh'g denied, 430 U.S. 976, 97 S. Ct. 1669, 52 L. Ed. 2d 371 (1977).

State taxes may be validly levied on corporations which carry on local activities sufficiently separate from interstate commerce, even though such taxes amount to the same as if levied on the interstate business itself. Stone v. Dunn Bros., 224 Miss. 762, 80 So. 2d 802 (1955), error overruled, 224 Miss. 777, 81 So. 2d 712 (1955), appeal dismissed, 350 U.S. 878, 76 S. Ct. 139, 100 L. Ed. 775 (1955), reh'g denied, 350 U.S. 943, 76 S. Ct. 299, 100 L. Ed. 822 (1956).

Even though the business of operating an intrastate pipeline is interstate commerce, state statute (Mississippi Code 1942, §§ 10105, 10109) imposing a tax measured by gross receipts from the operation of such a pipeline which is wholly within the state is not invalidated by the commerce clause of the federal constitution, where the tax does not discriminate against interstate commerce in favor of competing intrastate commerce of like character, the nature of the subject of taxation makes apportionment unnecessary, there is no attempt to tax interstate activities carried on outside the state's borders, and no other state can repeat the tax. Interstate Oil Pipe Line Co. v. Stone, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

A state statute is not invalidated by the commerce clause of the federal constitution merely because it imposes a direct tax on the privilege of engaging in interstate commerce. Interstate Oil Pipe Line Co. v. Stone, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

A state franchise, privilege or excise tax on intrastate business does not offend the commerce clause of the federal constitution, even though the taxpayer conducts interstate as well as intrastate business and the tax is measured by property or receipts which are used in or attributable to interstate business. Interstate Oil Pipe Line Co. v. Stone, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

2. Construction and application.

Telephone company held not liable for privilege tax measured by gross receipts from service charges, in respect of bills paid by governmental agencies to which tax was not added as a separate charge, where treated for rate-making purposes as an operating expense. Monaghan v. Southern Bell Tel. & Tel. Co., 242 Miss. 611, 136 So. 2d 198 (1962).

As distinguished from the paragraph imposing a tax "upon every person engaging or continuing within this state in the business of operating an express business, transporting freight or passengers from one point to another in this state," the subsequent paragraph levying a tax "upon every person engaging or continuing within this state in the business of operating motor vehicles on the public highways of this state for the transportation of persons or property for compensation or hire," applies to the operation of motor vehicles for the transportation of persons or property for compensation or hire on the public highways of the state, and is not limited merely by such transportation from one point in the state to another. Stone v. Dunn Bros., 224 Miss. 762, 80 So. 2d 802 (1955), error overruled, 224 Miss. 777, 81 So. 2d 712 (1955), appeal dismissed, 350 U.S. 878, 76 S. Ct. 139, 100 L. Ed. 775 (1955), reh'g denied, 350 U.S. 943, 76 S. Ct. 299, 100 L. Ed. 822 (1956).

In an action by motor carrier to recover amount of sales tax paid on gross income from operation within the state where the parties confined their argument to one paragraph of this section [Code 1942, § 10109], this did not preclude the supreme court from considering the entire section. Stone v. Dunn Bros., 224 Miss. 762, 80 So. 2d 802 (1955), error overruled, 224 Miss. 777, 81 So. 2d 712 (1955), appeal dismissed, 350 U.S. 878, 76 S. Ct. 139, 100 L. Ed. 775 (1955), reh'g denied, 350 U.S. 943, 76 S. Ct. 299, 100 L. Ed. 822 (1956).

Where a motor carrier carried pipe from railroad head to the buyer's pipeline right of way, this was an activity wholly within the state and the gross income was subject to sales tax of 2 percent, notwithstanding the fact that the carrier had a certificate of public convenience and necessity for interstate and foreign commerce. Stone v. Dunn Bros., 224 Miss. 762, 80 So. 2d 802 (1955), error overruled, 224 Miss. 777, 81 So. 2d 712 (1955), appeal dismissed, 350 U.S. 878, 76 S. Ct. 139, 100 L. Ed. 775 (1955), reh'g denied, 350 U.S. 943, 76 S. Ct. 299, 100 L. Ed. 822 (1956).

Any reasonable doubt as to whether the business done by the taxpayer can be detached in its main and essential feature as a local activity must be resolved in favor of taxpayer in connection with requirements that when the taxpayer is relying upon an exemption the claim of non-liability is to be clearly sustained under the proven facts in the light of the burden of proof resting upon the taxpayer to establish that the case comes within such exemption. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

The tax imposed hereby is not a tax on a commodity in transit, nor is it a direct tax upon gross receipts; but it is a tax on a local business of operating a pipe line, measured by the percentage of gross receipts derived therefrom. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

Transportation of oil from places within the state to destinations outside the state, either by interstate trunk pipelines or railroads, on a continuous journey, constitutes that character of commerce "which the State of Mississippi is prohibited from taxing under the Constitution of the United States." Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

This statute [Code 1942, § 10109] was designed only for the purpose of taxing the privilege of operating a pipeline for transporting oil from one point to another in the state, where it is then delivered to an interstate carrier prior to the beginning of its ultimate passage to a foreign state in interstate commerce. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

Neither the form of contract, nor method of billing is controlling on the question of whether a pipeline company was employed to do more than render a local service for the owner of oil by pumping the same out of its leased tanks into its pipeline from which it was later pumped and loaded by such company into railroad tank cars to be started on its ultimate interstate passage. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

Gross income of business done in transporting oil from one point to another in the state through the local gathering systems of a pipeline company and in loading the oil into railroad tank cars for shipment out of the state, was not derived from interstate commerce within the exemption of this section [Code 1942, § 10109], notwithstanding that the company received the oil under a tender of shipment showing the consignee and ultimate destination of the oil to be outside the state, and that company obtained from the railroad company for the owner a bill of lading at the time the oil was delivered to such railroad. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

RESEARCH REFERENCES

ALR. Cable Television Equipment or Services as Subject to Sales or Use Tax. 23 A.L.R. 6th 165.

Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

§ 27-65-20. Selling machinery, etc. used in operation of structures, facilities and land acquired and operated pursuant to Chapter 9, Title 59.

Upon every person engaging or continuing within this state in the business of selling machinery, machine parts and/or equipment to an operator or lessee of any structures, facilities and lands acquired and operated or leased pursuant to any of the provisions of Chapter 9, Title 59, Mississippi Code of 1972, which machinery, machine parts and/or equipment is to be located on and used exclusively and directly in the operation of such structures, facilities and lands, there is hereby levied, assessed and shall be collected a tax equal to one and one-half percent (1½%) of the gross proceeds of such retail sales of the business.

SOURCES: Laws, 1990, 1st Ex Sess, ch. 71, § 21, eff from and after passage (approved June 30, 1990).

Editor's Note — Laws of 1990, 1st Ex. Sess., ch. 71, § 21, effective June 30, 1990, contained identical language to this section and was codified as § 27-65-24. Because it was a duplication of this section, § 27-65-24 has been deleted from the Code at the direction of the Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Laws of 1990 1st Ex Sess, ch. 71, § 25, effective June 30, 1990, provides as follows:

"SECTION 25. Nothing in Sections 21 through 23 of this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the Mississippi Sales and Use Tax Laws prior to the effective date of this act, whether such assessments, appeals, suits, claims or actions shall have been begun before such date or shall thereafter be begun; and the provisions of the aforesaid statutes and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant thereunder prior to the effective date of this act, or the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Use taxes generally, see § 27-67-1 et seq.

Levy and collection of use taxes on tangible personal property, see §§ 27-67-5 through 27-67-7.

§ 27-65-21. Contracting, etc.

(1)(a)(i) Upon every person engaging or continuing in this state in the business of contracting or performing a contract or engaging in any of the activities, or similar activities, listed below for a price, commission, fee or wage, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-½%) of the total contract price or compensation received, including all charges related to the contract such as finance charges and late charges, from constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, any other improvement or structure or any part thereof when the compensation received exceeds Ten Thousand Dollars ($10,000.00). Such activities shall not include constructing, repairing or adding to property which retains its identity as personal property. The tax imposed in this section is levied upon the prime contractor and shall be paid by him.

(ii) Amounts included in the contract price or compensation received representing the sale of manufacturing or processing machinery for a manufacturer or custom processor shall be taxed at the rate of one and one-half percent (1-½%) in lieu of the three and one-half percent (3-½%).

(b) The following shall be excluded from the tax levied by this section:

(i) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, electrical system, air-conditioning system, heating system or any other improvement or structure which is used for or primarily in connection with a residence or dwelling place for human beings. Such residences shall include homes, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings, but shall not include apartment buildings, condominiums, hotels, motels, hospitals, nursing or retirement homes, tourist cottages or other commercial establishments.

(ii) The portion of the total contract price attributable to design or engineering services if:

1. The total contract price for the project exceeds the sum of One Hundred Million Dollars ($100,000,000.00); or

2. The engineering services are performed by a professional engineer as defined in Section 73-13-3, who is the general or prime contractor.

(iii) The contract price or compensation received to restore, repair or replace a utility distribution or transmission system that has been damaged due to ice storm, hurricane, flood, tornado, wind, earthquake or other natural disaster if such restoration, repair or replacement is performed by the entity providing the service at its cost.

(iv) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, facility or structure located at any refinery as defined in Section 27-65-24.

(c) Sales of materials and services for use in the activities hereby excluded from taxes imposed by this section, except services used in activities excluded pursuant to paragraph (b)(iii) of this subsection, shall be subject to taxes imposed by other sections in this chapter.

(2) Upon every person engaging or continuing in this state in the business of contracting or performing a contract of redrilling, or working over, or of drilling or completing an oil well or a gas well, regardless of whether such well is productive or nonproductive, for any valuable consideration, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-½%) of the total contract price or compensation received when such compensation exceeds Ten Thousand Dollars ($10,000.00).

The words, terms and phrases as used in this subsection shall have the meaning ascribed to them as follows:

"Operator" — One who holds all or a fraction of the working or operating rights in an oil or gas lease, and is obligated for the costs of production either as a fee owner or under a lease or any other form of contract creating working or operating rights.

"Bottom-hole contribution" — Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest. The contribution is payable whether the well is productive or nonproductive.

"Dry-hole contribution" — Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest.

Such contribution is payable only in the event the well is found to be nonproductive.

"Turnkey drilling contract" — A contract for the drilling of a well which requires the driller to drill a well and, if commercial production is obtained, to equip the well to such stage that the lessee or operator may turn a valve and the oil will flow into a tank.

"Total contract price or compensation received" — As related to oil and gas well contractors, shall include amounts received as compensation for all costs of performing a turnkey drilling contract; amounts received or to be received under assignment as dry-hole money or bottom-hole money; and shall mean and include anything of value received by the contractor as remuneration for services taxable hereunder. When the kind and amount of compensation received by the contractor is contingent upon production, the taxable amount shall be the total compensation receivable in the event the well is a dry hole. The taxable amount in the event of production when the contractor receives a production interest of an undetermined value in lieu of a fixed compensation shall be an amount equal to the compensation to the contractor if the well had been a dry hole.

(3) When the work to be performed under any contract is sublet by the prime contractor to different persons, or in separate contracts to the same persons, each such subcontractor performing any part of said work shall be liable for the amount of the tax which accrues on account of the work performed by such person when the tax heretofore imposed has not been paid upon the whole contract by the prime contractor.

When a person engaged in any business on which a tax is levied in Section 27-65-23, also qualifies as a contractor, and contracts with the owner of any project to perform any services in excess of Ten Thousand Dollars ($10,000.00) herein taxed, such person shall pay the tax imposed by this section in lieu of the tax imposed by Section 27-65-23.

Any person entering into any contract over Seventy-five Thousand Dollars ($75,000.00) as defined in this section shall, before beginning the performance of such contract or contracts, either pay the contractors' tax in advance, together with any use taxes due under Section 27-67-5, or execute and file with the commissioner a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner conditioned that all taxes which may accrue to the State of Mississippi under this chapter, or under Section 27-67-5 and Section 27-7-5, will be paid when due. Such bonds shall be either (a) "job bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of a specified job or activity regardless of date of completion; or (b) "blanket bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of all jobs or activities taxable under this section begun during the period specified therein, regardless of date of completion. The payments of the taxes due or the execution and filing of a surety bond shall be a condition precedent to the commencing work on any contract taxed hereunder. Provided, that when any bond is filed in lieu of the prepayment of the tax under this section, that the tax shall be payable monthly on the amount received during the previous month, and any use taxes due shall be payable on or before the twentieth day of the month following the month in which the property is brought into Mississippi.

Any person failing either to execute any bond herein provided, or to pay the taxes in advance, before beginning the performance of any contract shall be denied the right to perform such contract until he complies with such requirements, and the commissioner is hereby authorized to proceed either under Section 27-65-59, under Section 27-65-61 or by injunction to prevent any activity in the performance of such contract until either a satisfactory bond is executed and filed, or all taxes are paid in advance, and a temporary injunction enjoining the execution of such contract shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

Any person liable for a tax under this section may apply for and obtain a material purchase certificate from the commissioner which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected or repaired with no tax due. Provided, that the contractor applying for the contractor's material purchase certificate shall furnish the Department of Revenue a list of all work sublet to others, indicating the amount of work to be performed, and the names and addresses of each subcontractor.

SOURCES: Codes, 1942, § 10110; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1942, ch. 122; Laws, 1944, ch. 129, § 3; Laws, 1950, ch. 530, § 2; Laws, 1955, Ex Sess, ch. 109, § 11; Laws, 1956, ch. 420, § 1; Laws, 1958, ch. 574, § 8; Laws, 1962, ch. 598, §§ 1, 3; Laws, 1964, ch. 532, § 2; Laws, 1968, ch. 588, § 5; Laws, 1982, ch. 442, § 1; Laws, 1984, ch. 458, § 1; Laws, 1985, ch. 351, § 3; Laws, 1987, ch. 432; Laws, 1996, ch. 503, § 2; Laws, 1997, ch. 320, § 1; Laws, 2005, ch. 434, § 1; Laws, 2007, ch. 442, § 1; Laws, 2010, ch. 449, § 3; Laws, 2011, ch. 452, § 2; Laws, 2014, ch. 472, § 2; Laws, 2015, ch. 440, § 1, eff from and after July 1, 2015.

Editor's Note — Laws of 1992, ch. 421, § 1, effective July 1, 1992, provides as follows:

"SECTION 1. No municipal or county official shall issue a building permit to any person unless the person provides information satisfactory to the issuing official that the person complies with Section 27-65-21, Mississippi Code of 1972, or provides information satisfactory to the issuing official that the requirements of Section 27-65-21, Mississippi Code of 1972, do not apply to the person."

Cross References — Applicability of tax levied by this section to solid or hazardous waste treatment projects, see § 17-17-131.

Income tax, see § 27-7-1 et seq.

Person liable for tax levied under this section can apply for and obtain a "Material Purchase Certificate," which entitles holder to purchase certain materials and services with no tax due, see § 27-65-3.

Application of the term "wholesale sales" to § 27-65-21, see § 27-65-5.

Distribution of proceeds derived from contractor taxes levied under this section on contracts for construction or reconstruction of highways designated under § 65-3-97, see § 27-65-75.

Exclusion of tax revenue collected under this section in making monthly allocation and distribution of sales tax revenues to municipalities, see § 27-65-75.

Industrial exemptions from sales tax, see § 27-65-101.

Agricultural exemptions from sales tax, see § 27-65-103.

Governmental exemptions from sales tax, see § 27-65-105.

Utility exemptions from sales tax, see § 27-65-107.

Tax related exemptions from sales tax, see § 27-65-109.

Other exemptions from sales tax, see § 27-65-111.

Applicability of tax to agriculture and industry program, see § 57-3-33.

Applicability of this tax to mortgages, leases and purchases required to establish an industrial enterprise and financed by proceeds from bonds issued pursuant to chapter 10, title 57, Mississippi code of 1972, see § 57-10-255.

Contractors' tax imposed by this section as exception to tax exempt status of bonds issued to finance economic development projects, see § 57-10-439.

Certain purchases made pursuant to Small Enterprise Development Finance Act not exempt from contractor's tax imposed under this section, see § 57-71-13.

JUDICIAL DECISIONS

I. Under Current Law.

1. Validity.
2. Construction and application, generally.
3. Particular applications.
4. —Oil and gas wells.
5. [Reserved for future use.]

II. Under Former § 27-15-33.

6. Validity.
7. Construction and application.

I. Under Current Law.

1. Validity.

A tax based on the charge made without allocation, for services performed by a corporation in gathering data in Mississippi and interpreting them at the home office in another state, does not unconstitutionally burden interstate commerce. Monaghan v. Seismograph Serv. Corp., 236 Miss. 278, 108 So. 2d 721 (1959), appeal dismissed and cert. denied, 361 U.S. 35, 80 S. Ct. 137, 4 L. Ed. 2d 111 (1959).

Where a foreign corporation was engaged in constructing pipelines, which was new construction work, and pipeline companies, which furnished the right of way and pipe, had not become instrumentalities of interstate commerce, a sales tax imposed upon the foreign corporation was not invalid as a direct burden on interstate commerce. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

The local activity of a foreign corporation, not qualified to do business in the state as such, performed in the installation, adjustment and testing of certain air conditioning systems in buildings located in the state and constituting a substantial part of the performance of the contract for the sale of the machinery and equipment which it manufactured outside the state and shipped into the state in interstate commerce for use in air conditioning such buildings, was subject to the act imposed by the state statute; and the imposition of such tax was not a violation of the interstate commerce clause of the United States Constitution. Stone v. York Ice Mach. Corp., 193 Miss. 638, 10 So. 2d 380 (1942).

2. Construction and application, generally.

Sureties upon contractors' bonds under Miss. Code Ann. § 27-65-21 were not entitled to notice of their principals' deficiencies, audits, or assessments from the Mississippi State Tax Commission, as their right to notice did not arise until principals defaulted on paying the assessments under the language of the bonds and Miss. Code Ann. § 27-65-57. Fid. & Guar. Ins. Co. v. Blount, 63 So. 3d 453 (Miss. 2011).

Although a surety asserted that the holder of a payment bond lacked standing to bring suit against its own surety under Miss. Code Ann. § 31-5-51(2), Miss. Code Ann. § 27-65-21, not § 31-5-51, was the statute applicable to the question of whether the surety was responsible for the payment of unpaid sales tax, and the court determined that the holder had standing to assert its claims. Nash Plumbing, Inc. v. Ohio Cas. Ins. Co., — Bankr. —, 2008 Bankr. LEXIS 2008 (Bankr. N.D. Miss. June 11, 2008).

Corporation's contract fees for minor repairs performed on water and sewer systems were exempt from taxation because the systems were considered personal property. Blount v. ECO Res., Inc., 986 So. 2d 1052 (Miss. Ct. App. 2008), writ of certiorari denied by 987 So. 2d 451, 2008 Miss. LEXIS 343 (Miss. 2008).

Personal property exemption in Miss. Code Ann. § 27-65-21(1)(a)(i) does apply to repairs of water and sewer systems. Blount v. ECO Res., Inc., — So. 2d —, 2007 Miss. App. LEXIS 780 (Miss. Ct. App. Nov. 20, 2007), opinion withdrawn by, substituted opinion at 986 So. 2d 1052, 2008 Miss. App. LEXIS 276 (Miss. Ct. App. Apr. 22, 2008).

A tax imposed by this section [Code 1942, § 10110] is imposed directly upon the prime contractor, who is liable for the payment of the tax even though parts of the work may be performed by the subcontractors. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

Doubts in tax statutes should be resolved in favor of the taxpayer. Stone v. W.G. Nelson Exploration Co., 211 Miss. 199, 51 So. 2d 279 (1951).

It is the local activity in doing the work insofar as a contractor does it, and for the protection afforded by the state during the progress thereof, that the statutory remuneration is exacted of a contractor. Cook v. Stone, 192 Miss. 219, 5 So. 2d 223 (1941).

Where no one authorized to do so had invoked the action of the court on behalf of the state for the collection of excise taxes sought to be recovered in attachment proceedings, the court should not act sua sponte. City of Natchez v. Craig, 191 Miss. 567, 3 So. 2d 837 (1941).

Where attachment proceedings in chancery was commenced by the state tax collector on behalf of the state against nonresident construction companies, wherein it was sought to make a municipality garnishee, to collect excise taxes claimed to be due from the defendant, to which the municipality was alleged to be indebted, a motion by the municipality to dismiss the proceedings as to it should not have been overruled, since the state collector was without authority to bring proceedings on behalf of the state to collect the tax. City of Natchez v. Craig, 191 Miss. 567, 3 So. 2d 837 (1941).

Where the precise and only question presented for decision on appeal in a suit by the state tax collector, on behalf of the state to collect a gross income tax from a construction company, was whether a collector had any right or authority under the law to file or maintain the suit, or whether such right, so far as he was concerned, was vested exclusively in the chairman of the state tax commission, there was no occasion for decision as to whether the position of such chairman of the state tax commission, in refusing to give retroactive effect to new court decisions or to new opinions of the attorney general, any more than to new laws, was sound from a legal standpoint, or announced the correct policy that should have been pursued under the circumstances. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

3. Particular applications.

Chancery court properly granted a taxpayer's motion for summary judgment in its action to determine the sales tax due on certain items because, while a business owner was required to charge and collect 7% sales tax on tangible personal property sold "insofar as practicable," the taxpayer's responsibility of charging any sales tax at the time of the sale was obviated if a contractor provided a valid material purchase certificate. Miss. Dep't of Revenue v. Hotel & Rest. Supply, 192 So. 3d 942 (Miss. 2016).

When the issue was whether a surety was responsible for the payment of unpaid sales tax under a payment bond pursuant to Miss. Code Ann. § 27-65-21, the resolution involved contract construction. Because material factual issues remained that needed to be developed through the presentation of evidence, summary judgment was not appropriate. Nash Plumbing, Inc. v. Ohio Cas. Ins. Co., — Bankr. —, 2008 Bankr. LEXIS 2008 (Bankr. N.D. Miss. June 11, 2008).

Refund of sales tax was partially ordered because the exemption under Miss.

Code Ann. § 27-65-21(1)(a)(i) applied to the repairs of water and sewer systems; moreover, there was substantial evidence to support the finding that repairs to underground pipes were real property, while other repairs to movable items were to personal property. Blount v. ECO Res., Inc., — So. 2d —, 2007 Miss. App. LEXIS 780 (Miss. Ct. App. Nov. 20, 2007), opinion withdrawn by, substituted opinion at 986 So. 2d 1052, 2008 Miss. App. LEXIS 276 (Miss. Ct. App. Apr. 22, 2008).

The statute applied to a contract pursuant to which a bankruptcy debtor agreed to repair and convert a damaged tank barge into a replica of an 1860's side wheeler river boat to be utilized as a floating casino as the contract anticipated and included permanently mooring the vessel to the land where the ship was to remain indefinitely and, therefore, the barge lost its identity as personal property and became an extension of the land. Mississippi State Tax Comm'n v. Superior Boat Works, Inc. (In re Superior Boat Works, Inc.), 246 B.R. 259 (N.D. Miss. 2000), appeal dismissed by 268 F.3d 1063, 2001 U.S. App. LEXIS 17540 (5th Cir. Miss. 2001).

A levee constitutes an "improvement or structure" within the meaning of § 57 (subsections (a) and (b)), chapter 120, Laws, 1940 (former enactment of Code 1942, § 9584), and consequently a contractor, who contracted with the War Department of the federal government for the building of a levee along the Mississippi River, was subject to the sales tax imposed by former enactment of this section [Code 1942, § 10110] (§ 2-e, chapter 119, Laws, 1934) on persons engaged "in the business of contracting, as defined in the privilege tax law of this state." Stone v. Green, 199 Miss. 6, 23 So. 2d 542 (1945).

Where a substantial portion of a contract for the sale, installation, adjustment and testing of machinery and equipment, manufactured by a foreign corporation outside the state and shipped into the state by interstate commerce, is performed in the state, as a condition precedent to its final acceptance by the purchaser, the contention of such corporation as to its non-liability for the taxes in question, if sustained, would work an unjust discrimination against those residing in the state who may undertake to manufacture and install machinery and equipment in connection with the project enumerated by the taxing statute and also where the materials for any of such projects are ordered and shipped in interstate commerce for manufacturers out of the state and assembled and installed by local residents who may be engaged in the business of contracting in the state and liable for the taxes in question. Stone v. York Ice Mach. Corp., 193 Miss. 638, 10 So. 2d 380 (1942).

The construction of the grading, drainage structures and bridges on approximately eight miles of state highway, which was to be performed within two hundred and fifty days, did not constitute a "sale" to the state, and so exempt from privilege tax an ad interim payment, on the ground that final acceptance of the work and final payment therefor was not to be had until its completion. Cook v. Stone, 192 Miss. 219, 5 So. 2d 223 (1941).

4. —Oil and gas wells.

The ordinary meaning of the language in this section excludes contracts solely for pit pumping from the favorable treatment established in the statute; thus, a contract solely for pit pumping is taxable under the higher rate established in § 27-65-23 rather than the reduced rate provided for in this section. Buelow v. Kemp Co., 641 So. 2d 1226 (Miss. 1994).

The "dry hole" payment to a driller who, if a producing well results, is to have an interest therein, is not taxable as compensation for drilling, being a mere indemnity to cover part of his loss. Pool v. Monaghan, 242 Miss. 44, 133 So. 2d 519 (1961).

This section [Code 1942, § 10110] was never intended to apply to one who drills for oil on his own land on which he holds an oil lease, and the dry hole contributions are made to partially indemnify him against the enormous loss that he knows in advance that he will sustain in the event the drilling results in a dry hole, which is a condition precedent to any obligation on the part of the owners of the adjoining lands or leases to pay the promised contributions. Stone v. W.G. Nelson Exploration Co., 211 Miss. 199, 51 So. 2d 279 (1951).

This section [Code 1942, § 10110] which provides for tax above a certain compensation should apply only to one engaged in the business of contracting to drill the well for another contracting party at a fixed price, commission, fee or wage without regard to whether or not the drilling should result in a producing well. Stone v. W.G. Nelson Exploration Co., 211 Miss. 199, 51 So. 2d 279 (1951).

Proposed contributions, for drilling a well, where the driller held the oil and gas leases, which were not to be paid unless the operation should result in a dry hole, were in the nature of indemnity and not part of contract price for drilling and therefore not taxable under this section [Code 1942, § 10110]. Stone v. W.G. Nelson Exploration Co., 211 Miss. 199, 51 So. 2d 279 (1951).

Where a driller in good faith acquires a lease as owner in whole or part and drills a test well for oil thereon and receives contributions for others in the area to indemnify him against loss, the driller is not liable for the tax on the contributions so received. Stone v. W.G. Nelson Exploration Co., 211 Miss. 199, 51 So. 2d 279 (1951).

5. [Reserved for future use.]

II. Under Former § 27-15-33.

6. Validity.

The local activity of a foreign corporation, not qualified to do business in the state, as such, performed in the installation, adjustment and testing of certain air conditioning systems in buildings located in the state and constituting a substantial part of the performance of the contract for the sale of the machinery and equipment which it manufactured outside the state and shipped into the state in interstate commerce for use in air conditioning such buildings, was subject to the tax imposed by previous similar enactment of this section 9484, Code 1942 (Laws 1935, extraordinary sess., § 57, subsection a, chap. 20); and the imposition of such tax was not a violation of the interstate commerce clause of the United States Constitution. Stone v. York Ice Mach. Corp., 193 Miss. 638, 10 So. 2d 380 (1942).

7. Construction and application.

Payment of the contractor's privilege tax by a foreign corporation did not relieve it of the requirement that it obtain a certificate of authority to do business from the secretary of state and, absent such certificate, the contractor was not entitled to sue in state court to enforce a construction lien. Town & Country Plumbing Co. v. Delta Real Estate Dev., Inc., 357 So. 2d 126 (Miss. 1978).

A levee constitutes an "improvement or structure" within the meaning of former similar enactment hereof (Laws, 1940, ch. 120, § 57(a, b)), and consequently a contractor, who contracted with the War Department of the federal government for the building of a levee along the Mississippi river, was subject to the privilege tax imposed on persons engaged in the business of contracting, as defined in the privilege tax law. Stone v. Green, 199 Miss. 6, 23 So. 2d 542 (1945).

State tax collector, under statute giving him general authority to collect taxes (Code 1942, § 9174), had authority to maintain suit to collect contractor's license fee and privilege tax on contract by nonresident corporation to construct an army camp within the state, notwithstanding statute imposing the tax provides that application for license should be made to tax commissioner and delegates the duty to such commissioner to collect the tax. Craig v. J.A. Jones Constr. Co., 195 Miss. 378, 15 So. 2d 45 (1943).

Neither subsection c or subsection f hereof, nor any other section of the privilege tax act designates the duty to collect the tax, or the right to enforce it by suit, as exclusive in the tax commissioner. Craig v. J.A. Jones Constr. Co., 195 Miss. 378, 15 So. 2d 45 (1943).

Where a substantial portion of a contract for the sale, installation, adjustment and testing of machinery and equipment, manufactured by a foreign corporation outside the state and shipped into the state by interstate commerce, is performed in the state, as a condition precedent to its final acceptance by the purchaser, the contention of such corporation as to its nonliability for the taxes in question, if sustained, would work an unjust discrimination against those residing in the state who may undertake to manufacture and install machinery and equipment in connection with the project enumerated by the taxing statute and also where the materials for any of such projects are ordered and shipped in interstate commerce for manufacturers out of the state and assembled and installed by local residents who may be engaged in the business of contracting in the state and liable for the taxes in question. Stone v. York Ice Mach. Corp., 193 Miss. 638, 10 So. 2d 380 (1942).

ATTORNEY GENERAL OPINIONS

In accordance with Section 57-3-33, projects and property financed under the provisions of said chapter are exempt from all taxation except taxes levied pursuant to Section 27-65-21, Sections 37-57-105 and 37-59-23, and taxes levied pursuant to Section 27-39-329 when said tax is levied expressly "for school district purposes"; a tax levied under Section 37-29-141 for the support of junior (community) college districts is not for "school district purposes." Beech, Mar. 17, 2006, A.G. Op. 06-0009.

Even though amounts representing the 3½ percent contractor's tax could have been included in a contractor's bid and in the original contract amounts, and paid by a city when the work was performed, the city is not authorized to pay additional sums to the contractor after the work has been performed and payment obligations under the contracts have been met or in instances in which the claims are barred by the applicable statute of limitations. Odom, Apr. 21, 2006, A.G. Op. 06-0128.

The current corporate lessee of county-owned property first leased in 1963 under the old A. & I. statutes with exemption from ad valorem taxes for an unspecified period is entitled to an exemption for 10 years from the date the county approved assignment of the lease to that company. When the 10 years has already expired and the county erroneously omitted that leasehold from the tax assessment rolls for several years, the county may not assess back taxes. Approval by the county of sub-leases of the property is not an unlawful donation to a private party. Munn, March 9, 2007, A.G. Op. #07-00067, 2007 Miss. AG LEXIS 101.

RESEARCH REFERENCES

ALR. Who is a "contractor" within statutes requiring the licensing of, or imposing a license tax upon, a "contractor" without specifying the kinds of contractors involved. 19 A.L.R.3d 1407.

§ 27-65-22. Amusements.

(1) Upon every person engaging or continuing in any amusement business or activity, which shall include all manner and forms of entertainment and amusement, all forms of diversion, sport, recreation or pastime, shows, exhibitions, contests, displays, games or any other and all methods of obtaining admission charges, donations, contributions or monetary charges of any character, from the general public or a limited or selected number thereof, directly or indirectly in return for other than tangible property or specific personal or professional services, whether such amusement is held or conducted in a public or private building, hotel, tent, pavilion, lot or resort, enclosed or in the open, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income received as admission, except as otherwise provided herein. In lieu of the rate set forth above, there is hereby imposed, levied and assessed, to be collected as hereinafter provided,

a tax of three percent (3%) of gross revenue derived from sales of admission to publicly owned enclosed coliseums and auditoriums (except admissions to athletic contests between colleges and universities). There is hereby imposed, levied and assessed a tax of seven percent (7%) of gross revenue derived from sales of admission to events conducted on property managed by the Mississippi Veterans Memorial Stadium, which tax shall be administered in the manner prescribed in this chapter, subject, however, to the provisions of Sections 55-23-3 through 55-23-11.

(2) The operator of any place of amusement in this state shall collect the tax imposed by this section, in addition to the price charged for admission to any place of amusement, and under all circumstances the person conducting the amusement shall be liable for, and pay the tax imposed based upon the actual charge for such admission. Where permits are obtained for conducting temporary amusements by persons who are not the owners, lessees or custodians of the buildings, lots or places where the amusements are to be conducted, or where such temporary amusement is permitted by the owner, lessee or custodian of any place to be conducted without the procurement of a permit as required by this chapter, the tax imposed by this chapter shall be paid by the owner, lessee or custodian of such place where such temporary amusement is held or conducted, unless paid by the person conducting the amusement, and the applicant for such temporary permit shall furnish with the application therefor, the name and address of the owner, lessee or custodian of the premises upon which such amusement is to be conducted, and such owner, lessee or custodian shall be notified by the commission of the issuance of such permit, and of the joint liability for such tax.

(3) The tax imposed by this section shall not be levied or collected upon:

(a) Any admissions charged at any place of amusement operated by a religious, charitable or educational organization, or by a nonprofit civic club or fraternal organization (i) when the net proceeds of such admissions do not inure to any one or more individuals within such organization and are to be used solely for religious, charitable, educational or civic purposes; or (ii) when the entire net proceeds are used to defray the normal operating expenses of such organization, such as loan payments, maintenance costs, repairs and other operating expenses;

(b) Any admissions charged to hear gospel singing when promoted by a duly constituted local, bona fide nonprofit charitable or religious organization, irrespective of the fact that the performers and promoters are paid out of the proceeds of admissions collected, provided the program is composed entirely of gospel singing and not generally mixed with hillbilly or popular singing;

(c) Any admissions charged at any athletic games or contests between high schools or between grammar schools;

(d) Any admissions or tickets to or for baseball games between teams operated under a professional league franchise;

(e) Any admissions to county, state or community fairs, or any admissions to entertainments presented in community homes or houses which are publicly owned and controlled, and the proceeds of which do not inure to any individual or individuals;

(f) Any admissions or tickets to organized garden pilgrimages and to antebellum and historic houses when sponsored by an organized civic or garden club;

(g) Any admissions to any golf tournament held under the auspices of the Professional Golf Association or United States Golf Association wherein touring professionals compete, if such tournament is sponsored by a nonprofit association incorporated under the laws of the State of Mississippi where no dividends are declared and the proceeds do not inure to any individual or group;

(h) Any admissions to university or community college conference, state, regional or national playoffs or championships;

(i) Any admissions or fees charged by any county or municipally owned and operated swimming pools, golf courses and tennis courts other than sales or rental of tangible personal property;

(j) Any admissions charged for the performance of symphony orchestras, operas, vocal or instrumental artists in which professional or amateur performers are compensated out of the proceeds of such admissions, when sponsored by local music or charity associations, or amateur dramatic performances or professional dramatic productions when sponsored by a children's dramatic association, where no dividends are declared, profits received, nor any salary or compensation paid to any of the members of such associations, or to any person for procuring or producing such performance;

(k) Any admissions or tickets to or for hockey games between teams operated under a professional league franchise;

(*l*) Any admissions or tickets to or for events sanctioned by the Mississippi Athletic Commission that are held within publicly owned enclosed coliseums and auditoriums;

(m) Guided tours on any navigable waters of this state, which include providing accommodations, guide services and/or related equipment operated by or under the direction of the person providing the tour, for the purposes of outdoor tourism; and

(n) Any admissions to events held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds from the grant program authorized under Section 18 of Chapter 530, Laws of 1995.

SOURCES: Laws, 1978, ch. 501, § 1; Laws, 1979, ch. 428, § 2; Laws, 1982, Ex Sess, ch. 17, § 38; Laws, 1983, 2nd Ex Sess, ch. 6, § 7; Laws, 1984, 1st Ex Sess, ch. 10, § 5; Laws, 1989, ch. 479, § 1; Laws, 1989, ch. 548, § 7; Laws, 1990, ch. 312, § 1; Laws, 1992, ch. 419, § 5; Laws, 1994, ch. 322, § 1; Laws, 1996, ch. 524, § 1; Laws, 1997, ch. 568, § 1; Laws, 2007, ch. 512, § 1; Laws, 2014, ch. 528, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

UNDER FORMER § 27-11-5

1. In general.

A private country club operating a golf course and swimming pool for the exclusive use of its members and their invited guests is not subject to the tax levied by this section [Code 1942, § 9057]. Back-Acres Country Club, Inc. v. Mississippi State Tax Comm'n, 216 So. 2d 531 (Miss. 1968).

The provision of Laws 1952, chapter 418 (Code 1942, § 9057 Recompiled) imposing an additional three per cent on each dollar of gross revenue derived from the sale of admission to any moving picture show belonging to a chain or group of more than ten shows does not violate the equal protection clause of the Fourteenth Amendment to the federal Constitution. State v. Paramount-Gulf Theatres, 226 Miss. 404, 84 So. 2d 403 (1956).

Where a theater operator collected a tax from purchasers of the picture show tickets and turned the money over to the state treasury, and where no record was kept of individual purchasers, who paid the tax, to allow the movie operator to recover the tax would violate the doctrine against unjust enrichment. State v. Paramount-Gulf Theatres, 226 Miss. 404, 84 So. 2d 403 (1956).

ATTORNEY GENERAL OPINIONS

Tax imposed by this section is mandatory tax upon gross revenues from sale of admission to events held at stadium, and is collected for purpose of funding stadium operations. Orr, Apr. 21, 1993, A.G. Op. #93-0231.

Exceptions in this section are directed to places of amusement operated by listed organizations; exception is not applicable to events held by other entities at stadium. Orr, Apr. 21, 1993, A.G. Op. #93-0231.

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes § 61.

CJS. 86 C.J.S., Theaters and Shows §§ 18-22.

Lawyers' Edition. Tax legislation as violating Federal Constitution's First Amendment — Supreme Court cases. 103 L. Ed. 2d 951.

§ 27-65-23. Miscellaneous businesses.

Upon every person engaging or continuing in any of the following businesses or activities there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business, except as otherwise provided:

Air conditioning installation or repairs;

Automobile, motorcycle, boat or any other vehicle repairing or servicing;

Billiards, pool or domino parlors;

Bowling or tenpin alleys;

Burglar and fire alarm systems or services;

Car washing — automatic, self-service, or manual;

Computer software sales and services;

Cotton compresses or cotton warehouses;

Custom creosoting or treating, custom planing, custom sawing;

Custom meat processing;

Electricians, electrical work, wiring, all repairs or installation of electrical equipment;

Elevator or escalator installing, repairing or servicing;

Film developing or photo finishing;

Foundries, machine or general repairing;

Furniture repairing or upholstering;

Grading, excavating, ditching, dredging or landscaping;

Hotels (as defined in Section 41-49-3), motels, tourist courts or camps, trailer parks;

Insulating services or repairs;

Jewelry or watch repairing;

Laundering, cleaning, pressing or dyeing;

Marina services;

Mattress renovating;

Office and business machine repairing;

Parking garages and lots;

Plumbing or pipe fitting;

Public storage warehouses (There shall be no tax levied on gross income of a public storage warehouse derived from the temporary storage of tangible personal property in this state pending shipping or mailing of the property to another state.);

Refrigerating equipment repairs;

Radio or television installing, repairing, or servicing;

Renting or leasing personal property used within this state;

Services performed in connection with geophysical surveying, exploring, developing, drilling, producing, distributing, or testing of oil, gas, water and other mineral resources;

Shoe repairing;

Storage lockers;

Telephone answering or paging services;

Termite or pest control services;

Tin and sheet metal shops;

TV cable systems, subscription TV services, and other similar activities;

Vulcanizing, repairing or recapping of tires or tubes;

Welding; and

Woodworking or wood turning shops.

Income from services taxed herein performed for electric power associations in the ordinary and necessary operation of their generating or distribution systems shall be taxed at the rate of one percent (1%).

Income from services taxed herein performed on materials for use in track or track structures to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission shall be taxed at the rate of three percent (3%).

Income from renting or leasing tangible personal property used within this state shall be taxed at the same rates as sales of the same property.

Persons doing business in this state who rent transportation equipment with a situs within or without the state to common, contract or private commercial carriers are taxed on that part of the income derived from use within this state. If specific accounting is impracticable, a formula may be used with approval of the commissioner.

A lessor may deduct from the tax computed on the rental income from tangible personal property a credit for sales or use tax paid to this state at the time of purchase of the specific personal property being leased or rented until such credit has been exhausted.

Charges for custom processing and repairing services may be excluded from gross taxable income when the property on which the service was performed is delivered to the customer in another state either by common carrier or in the seller's equipment.

When a taxpayer performs unitary services covered by this section, which are performed both in intrastate and interstate commerce, the commissioner is hereby invested with authority to formulate in each particular case and to fix for such taxpayer in each instance formulae of apportionment which will apportion to this state, for taxation, that portion of the services which are performed within the State of Mississippi.

SOURCES: Codes, 1942, § 10111; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 122; Laws, 1944, ch. 129, § 4; Laws, 1946, ch. 262, § 3; Laws, 1948, ch. 461, § 1; Laws, 1950, ch. 530, § 3; Laws, 1954, ch. 383; Laws, 1955, Ex Sess, ch. 109, § 12; Laws, 1956, ch. 421, § 1; Laws, 1958, ch. 574, § 9; Laws, 1962, ch. 599, §§ 1, 2; Laws, 1964, ch. 532, § 3; Laws, 1964, ch. 531, § 4; Laws, 1968, ch. 588, § 6; Laws, 1978, ch. 440, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 39; Laws, 1983, ch. 546, § 2; Laws, 1983, 2nd Ex Sess, ch. 6, § 8; Laws, 1984, ch. 458, § 2; Laws, 1984, 1st Ex Sess, ch. 10, § 6; Laws, 1985, ch. 351, § 4; Laws, 1988, ch. 491, § 1; Laws, 1992, ch. 419, § 6; Laws, 1997, ch. 489, § 1; Laws, 2001, ch. 309, § 1; Laws, 2005, ch. 486, § 1; Laws, 2006, ch. 498, § 1; Laws, 2007, ch. 526, § 2, eff from and after passage (approved Apr. 18, 2007.)

Editor's Note — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 2001, ch. 309, § 2, effective July 1, 2001, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Exemption from amusement devices tax, see § 27-27-11.

Application of the term "wholesale sales" to § 27-65-23, see § 27-65-5.

Payment of tax on contracting work in lieu of tax imposed on contractor by this section, see § 27-65-21.

Definition of hotel or motel for purposes of certain taxes levied under authority of local and private laws, see § 27-65-23.1.

Collection of tax, see § 27-65-31.

Distribution of taxes collected, see § 27-65-75.

Payment of sales tax directly to the commissioner under permits issued to manufacturers, utilities, and construction contractors, making purchases, see § 27-65-93.

Industrial exemptions from sales tax, see § 27-65-101.

Governmental exemptions from sales tax, see § 27-65-105.

Other exemptions from sales tax, see § 27-65-111.

Additional tax on persons engaging in business of renting motor vehicles, see § 27-65-231.

Use taxes, see § 27-67-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Particular applications.

3.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Chancery court erred in concluding that the changes in Miss. Code Ann. § 27-65-23 (Rev. 2010) created ambiguity where a notation at the bottom of the bill adopting the legislation was a nonsubstantive internal description used by the Legislature. Miss. Dep't of Revenue v. Heath, 185 So. 3d 1052 (Miss. Ct. App. 2015), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 91 (Miss. Feb. 25, 2016).

A "public storage warehouse" is a place where (1) the public (2) keeps and stores tangible personal property (3) for a fee (4) in the custody of a person operating a commercial business (5) where the customer does not have control, by rental of real property, of the facilities or the property stored therein. Mississippi State Tax Comm'n v. Vicksburg Term., Inc., 592 So. 2d 959 (Miss. 1991).

This section, which provides for a 6 percent tax on the gross income of a business which rents "transportation equipment with a situs within or without the State to common, contract or private commercial carriers," and is taxed on that part of the income derived from use within the State, violates the Due Process Clause of the Fourteenth Amendment and the Commerce Clause of the United States Constitution because the tax is imposed on an activity without a substantial nexus within Mississippi. Marx v. Truck Renting & Leasing Ass'n, 520 So. 2d 1333 (Miss. 1987).

A contract between a taxpayer and an auditor, employed by the state tax commission, under which the latter agreed to assist the taxpayer in recovering sales taxes illegally collected in consideration of receiving one-third of the amounts recovered, was against public policy and void. Independent Linen Serv. Co. v. Sennett, 194 Miss. 366, 12 So. 2d 530 (1943).

An auditor, employed by the state tax commission, could not recover on a contract with a taxpayer under which he agreed to assist the taxpayer to recover sales taxes illegally collected in consideration of one-third of the amounts recovered, on the ground that the taxpayer's business was not taxable under the statute and therefore the state had wrongfully collected the tax and should have refunded it, since such question was not for the auditor's decision but depended upon the interpretation given this section [Code 1942, § 10111] by the officers charged with the collection of the tax, subject, when challenged, to the approval of the courts. Independent Linen Serv. Co. v. Sennett, 194 Miss. 366, 12 So. 2d 530 (1943).

2. Particular applications.

Undisputed facts presented by the Mississippi Department of Revenue (MDOR) showed that an assessment was made against debtor for sales tax, that debtor failed to appeal the assessment to the MDOR's board of review, and that the MDOR recorded tax liens. Thus, the MDOR was entitled to a judgment as a matter of law that the indebtedness was nondischargeable in debtor's bankruptcy case. Cooper v. Miss. Dep't of Revenue (In re Cooper), — Bankr. —, 2015 Bankr. LEXIS 3261 (Bankr. S.D. Miss. Sept. 25, 2015).

Bankruptcy debtor was liable for sales taxes as assessed by a state tax agency since the debtor engaged in business activities involving servicing and installing air conditioning and refrigeration units, the debtor failed to preserve invoices, the agency assessed the taxes based on available information, and the debtor failed to show that bank deposits were loans to rebut the presumption that the agency's assessment was correct. Blalock v. Miss. Dep't of Rev. (In re Blalock), 537 B.R. 284 (Bankr. S.D. Miss. 2015).

The ordinary meaning of the language in § 27-65-21 excludes contracts solely for pit pumping from the favorable treatment established in the statute; thus, a contract solely for pit pumping is taxable under the higher rate established in this section rather than the reduced rate provided for in § 27-65-21. Buelow v. Kemp Co., 641 So. 2d 1226 (Miss. 1994).

A commercial business known in the trade as a "terminal company," which contracted with its customers to "receive," "store," "reship," and "handle" liquid petroleum products and which was "open to all" in that any customer that met its prices could contract for services, was a "public storage warehouse" within the meaning of this section. Mississippi State Tax Comm'n v. Vicksburg Term., Inc., 592 So. 2d 959 (Miss. 1991).

State did not violate First Amendment by extending generally applicable sales tax to cable television services while exempting print media from such tax. Leathers v. Medlock, 499 U.S. 439, 111 S. Ct. 1438, 113 L. Ed. 2d 494 (1991), on remand, 305 Ark. 610, 808 S.W.2d 785 (1991), on remand, 311 Ark. 175, 842 S.W.2d 428 (1992).

A business was a "public storage warehouse," even though it had a "primary service" contract with a customer since the contract was not "exclusive" and the business could still provide its services to whomever wanted to pay the contract price. Mississippi State Tax Comm'n v. Vicksburg Term., Inc., 592 So. 2d 959 (Miss. 1991).

Taxpayers in the business of providing oil field services are required to include in gross income or total receipts the recovery of the costs of personal property used and consumed in providing the taxable service. McGowan v. Marx, 537 So. 2d 426 (Miss. 1988), mandate amended, 546 So. 2d 699 (Miss. 1988).

A five percent sales tax on the gross receipts of a launderette or coin operated laundry is collectible under this section and may continue to be so collected. Lambert v. Schilling, 451 So. 2d 773 (Miss. 1984).

A company which had built a storage facility for the primary purpose of entering into an exclusive storage contract with another company for five years with an option to renew was not operating a "public" warehouse within the meaning of the statute and was not therefore subject to tax; such contract was a non-taxable lease as defined in Rule 67 of the State of Mississippi 1980 Sales and Use Tax Laws. Lambert v. Mississippi Limestone Corp., 405 So. 2d 131 (Miss. 1981).

An assessment for sales taxes was properly imposed on the gross proceeds received by an oil company from oil field services rendered by it as co-owner/operator for other co-owners of various oil and gas properties in the state, which proceeds represented charges to the other co-owners for their proportionate share of the cost incurred in providing the oil field services, including a reasonable fee for supervision, even though the oil company contended that its main business was discovering, producing and marketing oil, gas and minerals, that its services as an operator in conjunction with co-owners was incidental to its main business, and that it was not permitted to make a profit on its oil field services, where the company received a benefit in its operation as co-owner/operator in that it was able to develop, produce and market oil, gas and minerals in an efficient operation, which involved less expense and waste to it; such benefit and advantage comes within the § 27-65-9 definition of business. Brady v. Getty Oil Co., 376 So. 2d 186 (Miss. 1979).

The assessment of a sales tax against the operator of a cable television system did not impose an unconstitutional burden on interstate commerce where all of the income upon which the tax could be imposed was derived within the state and the character of the operator's business was such that it was not subject to the danger of burdensome cumulative taxation by other states. Rhoden v. Goodling Enters., Inc., 295 So. 2d 433 (Miss. 1974).

A retailer engaged in the sale of tile in an installed condition is a retailer of tangible personal property subject to the tax under Code 1942, § 10108, and the fact that he was paid by the job, charging only one price for both tile and installation, was immaterial. Mississippi State Tax Comm'n v. Hinton, 218 So. 2d 740 (Miss. 1969).

Where a lease of patented box making machine provided that lessees operating that machine should pay lessor four per cent of gross sales of patented box made and two per cent of gross sales of all other boxes made, the difference between four per cent of gross sales of patented boxes and two per cent of gross sales of unpatented boxes constituted royalty and therefore was not subject to the state sales tax. Stone v. Stapling Mach. Co., 220 Miss. 470, 71 So. 2d 205 (1954), appeal dismissed, 348 U.S. 802, 75 S. Ct. 31, 99 L. Ed. 633 (1954), reh'g denied, 348 U.S. 884, 75 S. Ct. 123, 99 L. Ed. 695 (1954).

When patented box making machines, leased by foreign corporation for operation in the state, came to rest in the state for the purpose of manufacturing patented and unpatented boxes, the use or rent thereof became localized and they left the stream of interstate commerce. Stone v. Stapling Mach. Co., 220 Miss. 470, 71 So. 2d 205 (1954), appeal dismissed, 348 U.S. 802, 75 S. Ct. 31, 99 L. Ed. 633 (1954), reh'g denied, 348 U.S. 884, 75 S. Ct. 123, 99 L. Ed. 695 (1954).

A hotel operator, who contracted with the United States government to supply lodging to army and air force recruits and agreed that the government would not be expected to pay the sales tax of such lodgings, was himself liable for the sales tax upon the lodgings so furnished. Edwards House Co. v. Stone, 216 Miss. 96, 61 So. 2d 663 (1952).

Under statute levying a tax on the gross income from business of operating a hotel and also statute exempting from the general sales tax so much of the gross income as it derived from sales of tangible property to the United States government and so much thereof as it derived from charges for labor to the United States government, the furnishing of lodging in a hotel to the United States government is neither sale of tangible property nor a charge for labor. Edwards House Co. v. Stone, 216 Miss. 96, 61 So. 2d 663 (1952).

A company engaged in the business of renting and leasing towels, linen and similar articles, never selling any tangible property, and which paid all privilege taxes as a linen service company, was not liable for the sales tax. Independent Linen Serv. Co. v. Stone, 192 Miss. 832, 6 So. 2d 110 (1942).

A linen service company, which had collected a sales tax from its customers, although it was not within the purview of the statute and so was not liable itself for the taxes and was under no duty to collect them from the customers, could recover money thus collected, which it had paid over to the state tax commission under the sales tax law. Independent Linen Serv. Co. v. Stone, 192 Miss. 832, 6 So. 2d 110 (1942).

3.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Machine called "Logger's Dream" used in essential process of gathering and loading logs for transport to sawmill is within that provision of this section [Code 1942, § 10111] as it stood in 1942 which prescribes a sales tax wholesale rate for "machinery, and machine parts . . . .which are exclusive necessities to processing." Stone v. Taylor Mach. Works, 204 Miss. 790, 36 So. 2d 137 (1948), suggestion of error sustained, 204 Miss. 790, 37 So. 2d 779 (1948).

Under this section [Code 1942, § 10111] as it stood in 1942 Code, in order for a business to be subject to the tax under subsection 2 thereof, it must be subject to a privilege tax, and the business done must involve a sale of tangible property. Singing River Tire Shop v. Stone, 21 So. 2d 580 (Miss. 1945).

Prior to 1944 amendment of this section [Code 1942, § 10111], "recapping" of automobile tires did not constitute "vulcanizing" within the meaning of subsection 2 thereof with respect to imposition of sales tax. Singing River Tire Shop v. Stone, 21 So. 2d 580 (Miss. 1945).

Under an earlier statute, corporations engaged in "ginning" cotton were held taxable on two per cent of their income from tolls charged as "persons engaged in business subject to privilege tax," rather than on one-fourth of one per cent of gross proceeds of sale of cotton as "manufacturers" engaged in selling cotton. Frazier v. Stone, 171 Miss. 56, 156 So. 596 (1934).

ATTORNEY GENERAL OPINIONS

Statute probably gives State Tax Commission sufficiently broad authority to impose sales tax on activity of drilling for and testing of soil and water samples to assess environmental contamination. Hall, March 23, 1994, A.G. Op. #94-0168.

RESEARCH REFERENCES

ALR. Tax on hotel-motel room occupancy. 58 A.L.R.4th 274.

Sales and use taxes on sale or lease of mailing or customer list. 80 A.L.R.4th 1126.

Computer software or printout transactions as subject to state sales or use tax. 36 A.L.R.5th 133.

Cable Television Equipment or Services as Subject to Sales or Use Tax. 23 A.L.R. 6th 165.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 176.

Lawyers' Edition. Validity, under commerce clause of Federal Constitution, of state tolls or taxes on, or affecting, interstate or foreign air carriers or passengers. 31 L. Ed. 2d 975.

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 27-65-23.1. Definition of hotel or motel for purposes of certain taxes levied under authority of local and private laws.

(1) Subject to the provisions of this section, for any tax levied and collected under the authority of a local and private law of the State of Mississippi ("local and private law"), that is levied or imposed on the gross proceeds or gross income from room rentals of hotels or motels and is collected and paid to the State Tax Commission in the same or similar manner that state sales taxes are collected and paid, the term "hotel" or "motel" also shall include (regardless of how such term is defined in the local and private law) any entity or individual engaged in the business of furnishing or providing one or more rooms intended or designed for dwelling, lodging or sleeping purposes that at any one time will accommodate transient guests and that are known to the trade as such and includes every building or other structure kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay or other consideration to transient guests regardless of the number of rooms, units, suites or cabins available, excluding nursing homes or institutions for the aged or infirm as defined in Section 43-11-1 and personal care homes.

(2) If the definition of hotel or motel provided in the local and private law authorizing the tax does not include the entities described in subsection (1) of this section, then the provisions of subsection (1) of this section shall not apply

unless the county board of supervisors or municipal governing authorities, as appropriate, authorized to levy the tax under the local and private law, adopts a resolution declaring their intention to include such entities for the purposes of the tax. If the county board of supervisors or municipal governing authorities, as appropriate, adopts such a resolution, then at least thirty (30) days before the effective date of the levy of the tax upon the entities described in subsection (1) of this section, the county board of supervisors or municipal governing authorities, as appropriate, shall furnish to the State Tax Commission a certified copy of such resolution.

SOURCES: Laws, 2007, ch. 526, § 3, eff from and after passage (approved Apr. 18, 2007.)

§ 27-65-24. Sales of manufacturing or processing machinery to be installed and/or used at refinery; performance of construction activities at or in regard to refinery.

(1) There is levied, assessed and shall be collected a tax on the sale of manufacturing or processing machinery to be installed and/or used at a refinery in this state and on the performance of construction activities at or in regard to a refinery in this state. The tax is in the amount of:

(a) One and one-half percent (1-½%) on the gross proceeds of sales for manufacturing or processing machinery without any regard as to whether or not the machinery retains its identity as tangible personal property after installation; and

(b) Three and one-half percent (3-½%) of one hundred three and one-half percent (103-½%) of the total contract price or compensation paid for the performance of a construction activity.

(2) If the owner of the refinery holds a direct pay permit issued by the Department of Revenue under Section 27-65-93, the owner shall furnish the permit to the seller or person performing the construction activity unless the holder of the direct pay permit is given written instructions or written authority to do otherwise by the commissioner. After being furnished the direct pay permit, the seller or person performing the construction activity shall be relieved of the duty to collect the tax imposed under subsection (1) of this section and the owner of the refinery shall pay the tax in the manner required by rule and regulation promulgated by the commissioner. The commissioner may assign a distinctive number to the refinery and issue the distinctive number to the owner. The owner of the refinery may furnish the distinctive number to persons performing construction activities in order to allow such persons to purchase component materials and parts for use in the construction activity without the requirement of paying sales tax on the purchases.

(3) Any owner of a refinery who makes application for a distinctive number as provided for in subsection (2), shall be required to execute and file with the commissioner a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the

commissioner, conditioned that all taxes which may accrue to the State of Mississippi under this chapter will be paid when due.

(4) As used in this section:

(a) "Refinery" means any facility that manufactures finished petroleum products from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, or alcohol. The term "refinery" does not include terminals, bulk plants or other locations where finished products are blended.

(b) "Construction activity" means the performance of any activity involving and/or incidental to constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, and other improvement or structure or any part thereof.

(c) "Total contract price or compensation received" means all compensation received for the performance of construction activities, including monies received for all charges related to the contract or construction activities, including, but not limited to, finance charges and late charges; however, where the total contract price of a project exceeds the sum of One Hundred Million Dollars ($100,000,000.00) that portion of the compensation received in regard to the project that is attributable to design or engineering shall not be considered part of the total contract price or compensation received for construction activities from the project.

SOURCES: Laws, 2010, ch. 449, § 2; Laws, 2011, ch. 452, § 1, eff from and after July 1, 2011.

Editor's Note — Laws of 2010, ch. 449, § 1 provides:

"SECTION 1. The Legislature finds and declares that:

"(a) The current taxation for sales tax purposes of certain refineries is extremely complex due to the nature of the refining work performed, the types of structures needed to perform the refinery operations, the multiple tax rates involved and that the incidence of the tax may be on the owner and/or the contractor(s) performing the work.

"(b) Due to such complexities, it is in the best interest of the state to establish a tax structure for certain refineries that will reduce the administrative burden of the Department of Revenue related to the collection of the tax due from sales of property and the performance of construction activities at certain refineries, will not reduce or defer any tax currently received from such activities, and will remove the burden from determining the correct rate of tax from the seller or contractor and place such burden on the owner of the facility."

§ 27-65-25. Sales of alcoholic beverages.

Upon every person engaging or continuing within this state in the business of selling alcoholic beverages, the sales of which are legal under the provisions of Chapter 1 of Title 67, Mississippi Code of 1972, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross proceeds of the retail sales of the business. All sales at wholesale to retailers shall be taxed at the same rate as provided in this section for retail sales. A retailer in computing the tax on sales may take credit for the amount of the tax paid to the wholesaler at the rates provided herein and remit the difference to the commissioner, provided adequate records and all invoices are maintained to substantiate the credit claimed.

SOURCES: Codes, 1942, § 10112; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1958, ch. 575, § 1; Laws, 1962, ch. 601, §§ 1, 3; Laws, 1964, ch. 532, § 4; Laws, 1966, ch. 650, § 1; Laws, 1968, ch. 588, § 7; Laws, 1982, Ex Sess, ch. 17, § 40; Laws, 1983, 2nd Ex Sess, ch. 6, § 9; Laws, 1984, 1st Ex Sess, ch. 10, § 7; Laws, 1992, ch. 419, § 7, eff from and after June 1, 1992.

Editor's Note — Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Collection of tax, see § 27-65-31.

Distribution of taxes collected, see § 27-65-75.

Use taxes generally, see § 27-67-1 et seq.

Levy and collection of use taxes on tangible personal property, see §§ 27-67-5 through 27-67-7.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 27-67-305.

I. Under Current Law.

1. In general.

In view of the provisions of this section [Code 1942, § 10112] as it formerly read, and its enactment subsequent to the enactment of Code 1942, § 2613, the state of Mississippi does not have any sharply defined public policy affecting or relating to the practice of businesses entertaining or ingratiating themselves with their customers by serving or donating to them intoxicating liquors on which the state and its subdivisions have collected full tribute, and the deduction of the cost of such entertainment and donations as a business expense by a taxpayer on his federal income tax returns is allowed. Stacy v. United States, 231 F. Supp. 304 (S.D. Miss. 1963).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 27-67-305.

There is no repugnancy between statutes imposing a tax upon the illegal sale of intoxicating beverages and a statute prohibiting the possession thereof. State v. Wood, 187 So. 2d 820 (Miss. 1966).

The primary intent of the legislature in the enactment of statutes taxing the illegal sale of intoxicating liquor was to impose a penalty and a tax upon those persons deliberately violating the state's prohibition laws. State v. Wood, 187 So. 2d 820 (Miss. 1966).

§ 27-65-26. Selling, renting or leasing specified digital products.

(1) Upon every person engaging or continuing within this state in the business of selling, renting or leasing specified digital products, there shall be levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business. The sale of a digital code that allows the purchaser to obtain a specified digital product shall be taxed in the same manner as the sale of a specified digital product. The tax is imposed when:

(a) The sale is to an end user;

(b) The seller grants the right of permanent or less than permanent use of the products transferred electronically; or

(c) The sale is conditioned or not conditioned upon continued payment.

(2) Charges by one (1) specified digital products provider to another specified digital products provider holding a permit issued under Section 27-65-27 for services that are resold by such other specified digital products provider shall not be subject to the tax levied pursuant to this section.

(3) For purposes of this section:

(a) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books.

(b) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(c) "Digital audio works" means works that result from the fixation of a series of musical, spoken or other sounds, including ringtones. "Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(d) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books."

(e) "Electronically transferred" means obtained by the purchaser by means other than tangible storage media.

(f) "End user" means any person other than a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

(g) "Permanent use" means for purposes of this section for perpetual or for an indefinite or unspecified length of time.

(h) "Digital code" means a code that permits a purchaser to obtain a specified digital product at a later date.

SOURCES: Laws, 2009, ch. 332, § 1, eff from and after July 1, 2009.

Cross References — Exemption of certain businesses from the tax imposed in this section, see § 27-65-243.

§ 27-65-27. Permit to engage in business.

(1) Any person who engages, or who intends to engage, in any business or activity which will subject such person to a privilege tax imposed by this chapter, shall apply to the commissioner for a permit to engage in and to conduct any business or activity upon the condition that he shall pay the tax accruing to the State of Mississippi under the provisions of this chapter, and shall keep adequate records of such business or activity as required by this chapter. By making an application for a permit issued pursuant to this section, a person agrees, regardless of his presence in this state, to:

(a) Be subject to the jurisdiction of this state for purposes of taxation;

(b) Collect and remit all taxes levied under this chapter on the type of business or activity to be conducted by the applicant;

(c) Be subject to all the provisions of this chapter.

(2) Upon receipt of the permit, the applicant shall be duly licensed under this chapter to engage in and conduct the business or activity. The permit shall continue in force so long as the person to whom it is issued shall continue in the same business at the same location, unless revoked by the commissioner for cause.

(3) The commissioner shall require of every person desiring to engage in business within this state who maintains no permanent place of business within this state, of every person desiring to engage in the business of making sales of mobile homes, a cash bond or an approved surety bond in an amount sufficient to cover twice the estimated tax liability for a period of three (3) months. However, the bond shall in no case be less than One Hundred Dollars ($100.00) and the tax may be prepaid in lieu of filing bond if the amount is approved by the commissioner. This bond shall be filed with the commissioner prior to the issuance of a permit to do business and before any such person may engage in business within this state. Failure to comply with the provision will subject such person to the penalties provided by this chapter.

(4) The commissioner is authorized to deny the application for a permit or revoke the permit of any person who has failed or is failing to comply with any of the provisions of this chapter. The commissioner may also deny the application for a permit or revoke the permit of any person who has failed to satisfy all of the finally determined tax liabilities owed by that person. As used in this subsection, "finally determined tax liabilities" means any state tax, fee, penalty and/or interest owed by a person to the Mississippi State Tax Commission where the assessment of the liability has been made against that person as provided by law and such assessment is not subject to any further timely filed administrative or judicial review. Revocation of such permit, or engaging or continuing in business after such permit is revoked or engaging in business without a permit, shall subject the person to all the penalties imposed by this chapter.

(5) Any person liable for the tax who fails to obtain a permit from the commissioner, or who continues in business after such permit has been

revoked, or who fails to make his returns for taxation as provided, or who fails to keep adequate records and invoices provided by this chapter, or who fails or refuses to permit inspection of such records, or who fails to pay any taxes due hereunder, shall forfeit his rights to do business in this state until he complies with all the provisions of this chapter and until he enters into a bond, with sureties, to be approved by the commissioner, in an amount not to exceed twice the amount of all taxes estimated to become due under this chapter by the person for any period of three (3) months, conditioned to comply with the provisions of this chapter, and pay all taxes legally due by him.

(6) If any person is engaged in or continuing in this state in any business or activity without obtaining a permit, or after the permit has been revoked, or without filing a required bond, or without keeping and allowing inspection of all records required by this chapter, or without making a return, or returns, and without paying all taxes due by him hereunder, it shall be the duty of the commissioner to proceed by injunction to prevent the continuance of the business. Any temporary injunction enjoining the continuance of the business shall be granted without notice by a judge or chancellor now authorized to grant injunctions.

SOURCES: Codes, 1942, § 10115; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1948, ch. 440, § 1; Laws, 1952, ch. 403, § 1; Laws, 1955, Ex Sess, ch. 109, § 15; Laws, 1978, ch. 476, § 3, ch. 512, § 2; Laws, 1979, ch. 436, § 1; Laws, 2002, ch. 520, § 3; Laws, 2005, ch. 499, § 27, eff from and after July 1, 2005.

Cross References — Injunctions, generally, see § 11-13-1 et seq.

Certain charges by one telecommunications provider to another telecommunications provider holding permit issued under this section exempt from taxes levied under § 27-65-19(1)(e), see § 27-65-19.

Application of the term "wholesale sales" to § 27-65-27, see § 27-65-5.

Liability of agent for out-of-state dealer for collection of sales tax unless vendor principal is authorized to collect taxes and is registered under this section, see § 27-65-55.

Penalty for doing business without license, see § 27-65-85.

Permits under use tax law, see § 27-67-15.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 45 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23-33, 41-49, 61-63.

12 Am. Jur. Legal Forms 2d, Licenses and Permits §§ 164:21,164:22. (financial responsibility).

CJS. 53 C.J.S., Licenses §§ 62, 65, 66 et seq.

§ 27-65-29. Repealed.

Repealed by Laws of 1978, ch. 347, § 1, effective from and after July 1, 1978.

[Codes, 1942, § 10116; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 126; Laws, 1946, ch. 262, § 5; Laws, 1950, ch.

530, § 4; Laws, 1955, Ex Sess, ch. 109, § 16; Laws, 1957, Ex Sess, ch. 20, § 1; Laws, 1958, ch. 574; Laws, 1962, ch. 602, §§ 1, 3; Laws, 1964, ch. 532, § 5; Laws, 1965, Ex Sess, ch. 22, § 4; Laws, 1968, ch. 588, § 8; Laws, 1972, ch. 506, § 4; Laws, 1975, ch. 435]

Editor's Note — Former § 27-65-29 provided for exemptions. For provisions pertaining to exemptions from sale tax, see § 27-65-101 et seq.

§ 27-65-31. Seller to collect tax.

Any person liable for a privilege tax levied and assessed by this chapter except the taxes levied by Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, shall add the amount of such tax due by him to the sales price or gross income and, in addition thereto, shall collect, insofar as practicable, the amount of the tax due by him from the purchaser at the time the sales price or gross income is collected. For purposes of this section, there shall be a presumption that the taxpayer collected the tax from the customer or purchaser.

The commissioner is authorized, in his discretion, to prescribe by rule or regulation, brackets or schedules by which the applicable tax shall be collected from the purchaser.

The commissioner shall have the authority to make changes as necessary by rule or regulation to implement an agreement for the collection of sales tax by direct marketers with limited contact in Mississippi if, in his discretion, it is beneficial to the state for him to do so.

It shall be unlawful for any person, who is liable for a privilege tax levied by this chapter except the taxes levied by Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, to fail or refuse to add to the sales price and collect, insofar as practicable, the amount of tax due by him on each sale, except where the tax was included in the cost of furnishing service when said cost was a factor in the fixing of rates and charges.

The tax due under the provisions of this chapter shall be computed and paid on gross income or gross proceeds of sales of the business, regardless of the fact that small unit sales may be within the bracket of one (1) of the schedules which does not provide for the collection of the tax from the customer.

Nothing in this section with reference to the collection of the tax from the customer shall be construed to impair, abridge, alter or affect the obligation of any contract in existence at the time it becomes effective.

When the tax collected for any filing period is in excess of the amount due, the total tax collected, including that in excess of the computed liability, shall be paid to the commissioner. This provision shall be construed with other provisions of the law and given effect so as to result in the payment to the commissioner of the total tax collected if in excess of the amount due when computed at the applicable rates.

The funds collected by the taxpayer (seller) from the purchaser pursuant to the provisions of this chapter shall be considered "trust fund monies" and the taxpayer shall hold these funds in trust for the State of Mississippi. The funds shall be separately accounted for as provided by regulation of the commissioner. If the taxpayer fails to remit these trust fund monies as required by law, then the taxpayer may be assessed with a penalty in three (3) times the amount of taxes due. This penalty is to be assessed and collected in the same manner as taxes imposed by this chapter and shall be in addition to all other penalties and/or interest otherwise imposed. Notwithstanding any other provision of this section, the penalty imposed in this paragraph shall not be imposed based on any presumption that the taxpayer collected sales tax from the purchaser. The penalty provided in this paragraph shall not be levied unless the commissioner shall prove by preponderance of the evidence that the taxpayer actually collected these trust fund monies from the purchaser and knowingly and intentionally failed to remit them.

Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in a sum not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00).

SOURCES: Codes, 1942, § 10117; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1948, ch. 440, § 2; Laws, 1952, ch. 403, § 2; Laws, 1955, Ex Sess, ch. 109, § 17; Laws, 1958, ch. 574, § 12; Laws, 1970, ch. 547, § 1; Laws, 1978, ch. 476, § 4; Laws, 1986, ch. 451, § 3; Laws, 1998, ch. 359, § 1; Laws, 1999, ch. 452, § 2; Laws, 2014, ch. 476, § 11, effective from and after January 1, 2015.

Editor's Note — Section 27-65-15, referred to in the first and fourth paragraphs, was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Compensation or discount to taxpayer for collecting tax and filing returns, see § 27-65-33.

Preservation of returns by commissioner, see § 27-65-79.

Relief of seller from obligation to collect tax from manufacturers, utilities and construction contractors holding special permits, see § 27-65-93.

Tax upon sale or use of motor vehicles, see § 27-65-201.

Levy and collection of use taxes on tangible personal property, see §§ 27-67-5 through 27-67-7.

Collection of salesmen's tax, see § 27-67-509.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Chancery court properly granted a taxpayer's motion for summary judgment in its action to determine the sales tax due on certain items because, while a business owner was required to charge and collect 7% sales tax on tangible personal property sold "insofar as practicable," the taxpayer's responsibility of charging any sales tax at the time of the sale was obviated if a contractor provided a valid material purchase certificate. Miss. Dep't of Revenue v. Hotel & Rest. Supply, 192 So. 3d 942 (Miss. 2016).

In an action by a vendor to recover sales tax from a purchaser, the burden of proving the defense that the vendor had agreed to assume the tax was on the purchaser. Viking Supply Corp. v. Mantee Dev. Found., Inc., 218 So. 2d 887 (Miss. 1969).

Telephone company held not liable for privilege tax measured by gross receipts from service charges, in respect of bills paid by governmental agencies to which tax was not added as a separate charge, where treated for rate-making purposes as an operating expense. Monaghan v. Southern Bell Tel. & Tel. Co., 242 Miss. 611, 136 So. 2d 198 (1962).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

A contract between a taxpayer and an auditor, employed by the state tax commission, under which the latter agreed to assist the taxpayer in recovering sales taxes illegally collected in consideration of receiving one third of the amounts recovered, was against public policy and void. Independent Linen Serv. Co. v. Sennett, 194 Miss. 366, 12 So. 2d 530 (1943).

An auditor, employed by the state tax commission, could not recover on a contract with a taxpayer, under which he agreed to assist the taxpayer in recovering sales taxes illegally paid in consideration of a percentage of the amounts recovered, on the ground that his employment by the state was to assist in the collection of taxes and not in the refunding of taxes wrongfully collected, since such auditor was required to perform such duties as might be required by the commissioner, among which was the duty to assist the commissioner in the auditing of claims for a refund of taxes paid, if the commissioner so required. Independent Linen Serv. Co. v. Sennett, 194 Miss. 366, 12 So. 2d 530 (1943).

Under this section [Code 1942, § 10141], it is mandatory that the seller collect the sales tax by adding to the sale price the 2 percent sales tax thereon in addition to the sale price. Woodrich v. St. Catherine Gravel Co., 188 Miss. 417, 195 So. 307, 127 A.L.R. 1179 (1940).

Whether through mistake or carelessness, or want of care or design, the seller did not collect the sales tax at the time provided by the statute, that tax became due and payable by the buyer to the seller, notwithstanding the seller may have committed a misdemeanor by violating this section [Code 1942, § 10141]. Woodrich v. St. Catherine Gravel Co., 188 Miss. 417, 195 So. 307, 127 A.L.R. 1179 (1940).

Sand and gravel sold under a written contract constitute tangible property and subject to a sales tax within the purview of this section. Woodrich v. St. Catherine

Gravel Co., 188 Miss. 417, 195 So. 307, 127 A.L.R. 1179 (1940).

This statute [Code 1942, § 10141], when it became effective, created the relationship of debtor and creditor, and a contract for the sale of sand and gravel is deemed to have contemplated the addition of the sales tax to the contract sale price, since an inclusion of the tax in the original sale price would be a violation of the law. Woodrich v. St. Catherine Gravel Co., 188 Miss. 417, 195 So. 307, 127 A.L.R. 1179 (1940).

Where a written contract for a sale of land and gravel showed that the parties had agreed on a sale price and a sales tax was due under the controlling statute, it was not a violation of the parol evidence rule to show what the real consideration was. Woodrich v. St. Catherine Gravel Co., 188 Miss. 417, 195 So. 307, 127 A.L.R. 1179 (1940).

A violation of this section [Code 1942, § 10143] by the seller by failure or refusal to add to the sale price and collect the amount due by him on account of a sales tax would not discharge or distinguish the debt which was superimposed on the contract by the statute. Woodrich v. St. Catherine Gravel Co., 188 Miss. 417, 195 So. 307, 127 A.L.R. 1179 (1940).

This statute [Code 1942, § 10141] is not unconstitutional although it requires the seller to pass the tax on to the buyer and constitutes the seller a collector for the state. State ex rel. Rice v. Allen, 180 Miss. 659, 177 So. 763 (1938); Woodrich v. St. Catherine Gravel Co., 188 Miss. 417, 195 So. 307, 127 A.L.R. 1179 (1940).

The state on the relation of the attorney general was entitled to mandatory injunction requiring retail merchants to obey statute imposing tax on their sales, notwithstanding violation of statute is a criminal offense, where failure to obey statute was impairing the efficiency of state tax collector in ascertaining and collecting tax, since state was without an adequate remedy at law. State ex rel. Rice v. Allen, 180 Miss. 659, 177 So. 763 (1938).

RESEARCH REFERENCES

ALR. Applicability of sales tax to "tips" or service charges added in lieu of tips. 73 A.L.R.3d 1226.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 1 et seq.; 237 et seq.

CJS. 53 C.J.S., Licenses §§ 78, 79, 84-86 et seq.

§ 27-65-33. Returns.

(1)(a) Except as otherwise provided in this section, the taxes levied by this chapter shall be due and payable on or before the twentieth day of the month next succeeding the month in which the tax accrues, except as otherwise provided. Returns and payments placed in the mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed. The taxpayer shall make a return showing the gross proceeds of sales or the gross income of the business, and any and all allowable deductions, or exempt sales, and compute the tax due for the period covered.

(b) As compensation for collecting sales and use taxes, complying fully with the applicable statutes, filing returns and supplements thereto and paying all taxes by the twentieth of the month following the period covered, the taxpayer may discount and retain two percent (2%) of the liability on each return subject to the following limitations:

(i) The compensation or discount shall not apply to taxes levied under the provisions of Sections 27-65-19 and 27-65-21, or on charges for ginning cotton under Section 27-65-23.

(ii) The compensation or discount shall not apply to taxes collected by a county official or state agency.

(iii) The compensation or discount shall not exceed Fifty Dollars ($50.00) per month, or Six Hundred Dollars ($600.00) per calendar year, per business location on each state sales tax return, or on each use tax return.

(iv) The compensation or discount shall not apply to any wholesale tax, the rate of which is equal to or greater than the tax rate applicable to retail sales of the same property or service. The retailer of such items shall be entitled to the compensation based on the tax computed on retail sales before application of the credit for any tax paid to the wholesaler, jobber or other person.

(v) The compensation or discount allowed and taken for any filing period may be reassessed and collected when an audit of a taxpayer's records reveals a tax deficiency for that period.

(c) As compensation for collecting any tax imposed under the authority of a local and private law of the State of Mississippi which is collected and paid to the Department of Revenue in the same or similar manner that state sales taxes are collected and paid, complying fully with such applicable law, filing returns and supplements thereto and paying all taxes by the twentieth of the month following the period covered, the taxpayer may discount and retain two percent (2%) of the liability on each return subject to the following limitations:

(i) The compensation or discount shall not apply to taxes collected by a county official or state agency.

(ii) The compensation or discount shall not exceed Fifty Dollars ($50.00) per month, or Six Hundred Dollars ($600.00) per calendar year, per business location on each tax return.

(iii) The compensation or discount allowed and taken for any filing period may be reassessed and collected when an audit of a taxpayer's records reveals a tax deficiency for that period.

(2) A taxpayer required to collect sales taxes under this chapter and having an average monthly sales tax liability of at least Fifty Thousand Dollars ($50,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2014, and on or before the twenty-fifth day of June of each succeeding year thereafter, an amount equal to at least seventy-five percent (75%) of such taxpayer's estimated sales tax liability for the month of June of the current calendar year, or an amount equal to at least seventy-five percent (75%) of the taxpayer's sales tax liability for the month of June of the preceding calendar year. For the purposes of calculating a taxpayer's estimated sales tax liability for the month of June of the current calendar year, the taxpayer does not have to include taxes due on credit sales for which the taxpayer has not received

payment before June 20. Payments required to be made under this subsection must be received by the Department of Revenue no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this subsection and the taxpayer's actual sales tax liability for the month of June for which the estimated payment was required to be made. Payments made by a taxpayer under this subsection shall not be considered to be collected for the purposes of any sales tax diversions required by law until the taxpayer files a return for the actual sales taxes collected during the month of June. This subsection shall not apply to any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political subdivision of the State of Mississippi, or any agency, department, institution or instrumentality of any political subdivision of the State of Mississippi.

(3) All returns shall be sworn to by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, or authorized agent, if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust, estate, or in any other group or combination acting as a unit, any individual delegated by such firm shall swear to the return on behalf of the taxpayer. The commissioner may prescribe methods by which the taxpayer may swear to his return.

(4) The commissioner may promulgate rules and regulations to require or permit filing periods of any duration, in lieu of monthly filing periods, for any taxpayer or group thereof.

(5) The commissioner may require the execution and filing by the taxpayer with the commissioner of a good and solvent bond with some surety company authorized to do business in Mississippi as surety thereon in an amount double the aggregate tax liability by such taxpayer for any previous three-month period within the last calendar year or estimated three (3) months' tax liability. The bond is to be conditioned for the prompt payment of such taxes as may be due for each such return.

(6) The commissioner, for good cause, may grant such reasonable additional time within which to make any return required under the provisions of this chapter as he may deem proper, but the time for filing any return shall not be extended beyond the twentieth of the month next succeeding the regular due date of the return without the imposition of interest at the rate of one percent (1%) per month or fractional part of a month from the time the return was due until the tax is paid.

(7) For persistent, willful or recurring failure to make any return and pay the tax shown thereby to be due by the time specified, there shall be added to the amount of tax shown to be due ten percent (10%) damages, or interest at the rate of one percent (1%) per month, or both.

(8) Any taxpayer may, upon making application therefor, obtain from the commissioner an extension of time for the payment of taxes due on credit

sales until collections thereon have been made. When such extension is granted, the taxpayer shall thereafter include in each monthly or quarterly report all collections made during the preceding month or quarter, and shall pay the taxes due thereon at the time of filing such report. Such permission may be revoked or denied at the discretion of the commissioner when, in his opinion, a total sales basis will best reflect the taxable income or expedite examination of the taxpayer's records.

(9) Any taxpayer reporting credit sales before collection thereof has been made may take credit on subsequent returns or reports for bad debts actually charged off, if such amounts charged off have previously been included in taxable gross income or taxable gross proceeds of sales, as the case may be, and the tax paid thereon. However, any amounts subsequently collected on accounts that have been charged off as bad debts shall be included in subsequent reports and the tax shall be paid thereon.

(10) In cases where an extension of time has been granted by the commissioner for payment of taxes due on credit sales and the taxpayer thereafter discontinues the business, such taxpayer shall be required to file with the commissioner within ten (10) days, or such further time as the commissioner may direct, from the date of the discontinuance of such business, a special report showing the amounts of any credit sales which have not been included in determining the measure of the tax previously paid and any other information with reference to credit sales as the commissioner may require. The commissioner shall thereupon investigate the facts with reference to credit sales and the condition of the accounts, and shall determine, from the best evidence available, the value of all open accounts, notes or other evidence of debt arising from credit sales. The value of all notes, open accounts and other evidence of debt, as thus determined by the commissioner, shall be used in determining the amount of the tax for which such taxpayer shall be liable. When the amount of the tax shall have been ascertained, the taxpayer shall be required to pay the same within ten (10) days or such further time as the commissioner may allow, notwithstanding the fact that such note or accounts may still remain uncollected.

SOURCES: Codes, 1942, § 10118; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1952, ch. 403, § 3; Laws, 1955, Ex Sess, ch. 109, § 18; Laws, 1958, ch. 575, § 2; Laws, 1968, ch. 588, § 10; Laws, 1976, ch. 395; Laws, 1978, ch. 476, § 5; Laws, 1984, ch. 458, § 3; Laws, 1986, ch. 451, § 4; Laws, 1994, ch. 309 § 1; Laws, 1995, ch. 508, § 2; Laws, 1995, ch. 549, § 2; Laws, 2002, ch. 539, § 2; Laws, 2005, ch. 330, § 2; Laws, 2007, ch. 536, § 2; Laws, 2008, ch. 507, § 10; Laws, 2009, ch. 563, § 8; Laws, 2010, ch. 562, § 8; Laws, 2012, ch. 547, § 4; Laws, 2013, ch. 420, § 1, eff from and after passage (approved March 20, 2013.)

Editor's Note — Laws of 2007, ch. 536, § 4, as amended by Laws of 2008, ch. 507, § 12, provides:

"SECTION 4. This act shall take effect and be in force from and after July 1, 2009."

Laws of 2008, ch. 507, § 1, effective July 1, 2009, provides:

"SECTION 1. This act shall be known and may be cited as the "Budget Reconciliation Act of 2008."

Cross References — Definition of "wholesaler" and "jobber," see § 27-65-5.

Notice for failure to file return, see § 27-65-35.

Penalties for deficient or delinquent return, see § 27-65-39.

Liability of seller and purchaser of business, certain stockholders of small business corporations and agents for out-of-state dealers, see § 27-65-55.

Preservation of returns by commissioner, see § 27-65-79.

Confidential nature of returns, see § 27-65-81.

Penalty for failure or refusal to make returns, see § 27-65-85.

Returns under use tax law, see §§ 27-67-17, 27-67-19.

JUDICIAL DECISIONS

1. In general.

Substantial evidence existed to support defendant's conviction for tax evasion, despite defendant's contention that he was disinterested in his candy-making business. Defendant had established a wide network of vendors, and his daughters-in-law testified that defendant would beat them if he felt that they did not bring home enough in proceeds. King v. State, 897 So. 2d 981 (Miss. Ct. App. 2004), writ of certiorari denied by 896 So. 2d 373, 2005 Miss. LEXIS 224 (Miss. 2005).

RESEARCH REFERENCES

ALR. Retailer's failure to pay to government sale or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Forms 1 et seq.

§ 27-65-35. Failure to file return; notice.

If no return is made on or before the due date by any taxpayer required to make a return, the commissioner, as soon as practicable after the due date, shall make an assessment of taxes and damages from any information available, which shall be prima facie correct. The commissioner shall give written notice by mail or by personal delivery to the taxpayer of the tax and damages thus assessed and demand payment within sixty (60) days from the date the commissioner mailed or hand delivered the notice. In the case of an individual, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to the taxpayer, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the taxpayer's residence. In the case of a partnership, the notice shall be sent by mail to the partnership or delivered by an agent of the commissioner to any partner, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the residence of any partner. In the case of a corporation, limited liability company, joint venture, association, estate, trust or other group or combination acting as a unit, including any government entity, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to an officer of the entity, to someone above the age of sixteen (16) years at the residence of an officer of the entity or to a manager or general agent at the taxpayer's place of business. However, if the taxpayer shall file a return and pay the tax shown to be due within sixty (60) days from the date the commissioner mailed or hand delivered the assessment, the return and payment shall be accepted in lieu of the assessment.

SOURCES: Codes, 1942, § 10119; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 138; Laws, 1944, ch. 129, § 7; Laws, 1952, ch. 403, § 4; Laws, 1955, Ex Sess, ch. 106, § 1; Laws, 1958, ch. 576; Laws, 1976, ch. 435; Laws, 1992, ch. 407, § 1; Laws, 2007, ch. 359, § 1; Laws, 2009, ch. 492, § 103; Laws, 2014, ch. 476, § 12, effective from and after January 1, 2015.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Notice of assessment of taxes, damages and interest for failure to preserve adequate records of gross income; proceeds, see § 27-65-37.

Penalties for deficient or delinquent return, see § 27-65-39.

Enrolling a judgment for failure or refusal to pay sales tax, damages or interest after receiving notice and demand as provided in this section and § 27-65-37, see § 27-65-57.

Penalty for failure or refusal to make return, see § 27-65-85.

§ 27-65-37. Assessment of tax by commissioner.

(1) If adequate records of the gross income or gross proceeds of sales are not maintained or invoices preserved as provided herein, or if an audit of the records of a taxpayer, or any return filed by him, or any other information discloses that taxes are due and unpaid, the commissioner shall make assessments of taxes, damages, and interest from any information available, which shall be prima facie correct. However, if in an audit of the records of a taxpayer it is determined that during the period being audited the taxpayer reported and paid tax in accordance with a method used during a prior period which had been audited by the commissioner and not found to result in any additional tax due, the commissioner shall be estopped from collecting any additional tax as a result of the use of this previously audited method for any period prior to notification by the commissioner or his agent during the current audit that use of the previously audited method would result in additional tax being due if it is determined, through all information available regarding this taxpayer, that:

(a) The method in issue was previously audited by the commissioner with no additional tax determined to be due under such method;

(b) The method under consideration in the current audit is the same method that was used in the prior audit;

(c) There has not been a statutory or regulatory change that would have resulted in additional tax being due under this method after the statutory or regulatory change; and

(d) The taxpayer detrimentally relied on the fact that this method had been previously audited and not found to result in additional tax.

(2) The commissioner shall give notice to the taxpayer of the assessments and demand payment of the tax, damages and interest within sixty (60) days from the date the commissioner mailed or hand delivered the notice. The notice shall be sent by regular first class mail or delivered by an agent of the commissioner. In the case of an individual, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to the taxpayer, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the taxpayer's residence. In the case of a partnership, the notice shall be sent by mail to the partnership or delivered by an agent of the commissioner to any partner, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the residence of any partner. In the case of a corporation, limited liability company, joint venture, association, estate, trust or other group or combination acting as a unit, including any government entity, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to an officer of the entity, to someone above the age of sixteen (16) years at the residence of an officer of the entity or to a manager or general agent at the taxpayer's place of business.

(3) If the taxpayer shall fail or refuse to comply with the notice of assessment or shall fail to petition for a hearing, the commissioner shall proceed as provided in Section 27-65-39.

SOURCES: Codes, 1942, § 10119; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 138; Laws, 1944, ch. 129, § 7; Laws, 1952, ch. 403, § 4; Laws, 1955, Ex Sess, ch. 106, § 1; Laws, 1958, ch. 576; Laws, 2007, ch. 359, § 2; Laws, 2009, ch. 492, § 104; Laws, 2010, ch. 323, § 3; Laws, 2013, ch. 470, § 6; Laws, 2014, ch. 476, § 13, effective from and after January 1, 2015.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2013, ch. 470, § 7, effective January 1, 2013, provides:

"SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Notice of taxes and damages for failure to file return, see § 27-65-35.

Enrolling a judgment for failure or refusal to pay sales tax, damages or interest after receiving notice and demand as provided in this section and § 27-65-35, see § 27-65-57.

Penalties for deficient or delinquent return, see § 27-65-39.

Duty of taxpayer to keep records, see § 27-65-43.

Penalty for failure or refusal to make returns, see § 27-65-85.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

Where assessments or returns of additional sales taxes were made by the chairman of the state tax commission from the best information available where the taxpayer's records were found to be inadequate, and notice was given to the taxpayer setting out the basis for the commissioner's findings supporting such additional assessment, which assessments were approved by the tax commission and the taxpayer was given an opportunity both by the chairman of the commission and by the tax commission itself to negative by evidence the facts on which the assessments were based, the order of the tax commission approving such assessment did not violate the due process clause, since it was not necessary for the tax commission to set forth the facts on which the assessments were made in its order, as against the contention that orders of quasi-judicial commissions and bodies must be supported by a finding of basic fact. Viator v. State Tax Comm'n, 193 Miss. 266, 5 So. 2d 487 (1942), appeal dismissed, cert. denied, 316 U.S. 644, 62 S. Ct. 1109, 86 L. Ed. 1728 (1942), reh'g denied, 316 U.S. 711, 62 S. Ct. 1275, 86 L. Ed. 1777 (1942).

2. Construction and application.

Circuit court erred in denying relief to a seller in its action to collect the sales taxes that it paid because the buyer agreed to the pay the sales tax that was accessed to the seller, the liability of the purchaser was for the amount of the sales tax imposed on the seller, and the trial court erred as a matter of law in relitigating that issue. Nortrax S., Inc. v. Thornhill Forestry Serv., 204 So. 3d 837 (Miss. Ct. App. 2016), writ of certiorari denied by 205 So. 3d 1081, 2016 Miss. LEXIS 492 (Miss. Dec. 1, 2016).

Bankruptcy debtor was liable for sales taxes as assessed by a state tax agency since the debtor engaged in business activities involving servicing and installing air conditioning and refrigeration units, the debtor failed to preserve invoices, the agency assessed the taxes based on available information, and the debtor failed to show that bank deposits were loans to rebut the presumption that the agency's assessment was correct. Blalock v. Miss. Dep't of Rev. (In re Blalock), 537 B.R. 284 (Bankr. S.D. Miss. 2015).

Sales tax assessment was prima facie correct since the auditor properly relied on records provided by bankruptcy debtors to estimate taxable sales using the cash flow method, in the absence of records of actual taxable sales, and the debtors failed to show that the calculations or accounting methodology were improper. Fugitt v. Miss. Dep't of Revenue (In re Fugitt), 539 B.R. 289 (Bankr. S.D. Miss. 2014).

State tax authority properly mailed a sales tax assessment to bankruptcy debtors at the proper address, and the debtors' lack of memory was not evidence that the debtors did not receive the assessment. Fugitt v. Miss. Dep't of Revenue (In re Fugitt), 539 B.R. 289 (Bankr. S.D. Miss. 2014).

In order for the State Tax Commission's assessments to be prima facie correct, the commission's auditor must make them "from any information available" under this section, not from the best information available. Thus, in making sales tax assessments, the commission was not required to interview the tax payer, his employees, or his friends in order to determine the amount of markups to be applied to the figures obtained by the commission from the taxpayer's purchase invoices. Marx v. Bounds, 528 So. 2d 822 (Miss. 1988).

A retailer engaged in the sale of tile in an installed condition is a retailer of tangible personal property subject to the tax under Code 1942, § 10108, and the fact that he was paid by the job, charging only one price for both tile and installation, was immaterial. Mississippi State Tax Comm'n v. Hinton, 218 So. 2d 740 (Miss. 1969).

An assessment based upon the entire charge made by a petroleum exploration company for services rendered in gathering data in Mississippi and in interpreting them at its head office in another state is permissible where the charge was not allocated between these services, and the entire amount was reported as Mississippi income. Monaghan v. Seismograph Serv. Corp., 236 Miss. 278, 108 So. 2d 721 (1959), appeal dismissed and cert. denied, 361 U.S. 35, 80 S. Ct. 137, 4 L. Ed. 2d 111 (1959).

Although there is no requirement in Code 1942, § 10125 that notice of immediate assessment made under authority of subsection b be given to the taxpayer by registered mail, that section must be read and considered along with this section [Code 1942, § 10121] which confers upon the commissioner general authority to make an additional assessment and which requires the giving of notice. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

Mere irregularities in the assessment will not avail to support the recovery back of alleged illegally exacted taxes. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

Although the making of additional assessments requires the giving of a notice, a foreign corporation waived its right to object to want of notice where the corporation had its representative arrange for a conference and appear before the commissioner a few days later and present additional information relative to its tax liability which was accepted by the commissioner and a reduction of the assessment was made by reason thereof. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

Where foreign corporation, engaged in construction of pipelines for a fixed price, failed to file a bond conditioned for the payment of sales taxes, and then was removing all of its property from the state, the tax commissioner had a right to issue a jeopardy warrant authorizing the seizure of the property of the foreign corporation without waiting for expiration of the 10 days within which the taxpayer might petition for a hearing. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 237 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Indians, Form 4.1 (complaint, petition, or declaration — by motor fuel dealer — to recover motor fuel taxes wrongfully assessed by state agency against sales on Indian reservation).

22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Form 5.1 (complaint, petition or declaration — for declaratory relief from sales tax levy — taxes assessed on nontaxable transactions — motor fuel taxes wrongfully assessed by state agency against sales on Indian reservations).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 402.1.1 (complaint, petition, or declaration — for declaratory relief from sales tax levy — motor fuel taxes wrongfully assessed by state agency against sales on Indian reservations).

CJS. 53 C.J.S., Licenses §§ 97-99 et seq.

§ 27-65-39. Penalties for deficient or delinquent return.

If any part of the deficient or delinquent tax is due to negligence or failure to comply with the provisions of this chapter or authorized rules and regulations promulgated under the provisions of this chapter without intent to defraud, there may be added as damages ten percent (10%) of the total amount of deficiency or delinquency in the tax, or interest at the rate of one percent (1%) per month, except as otherwise provided in this section, or both, from the date such tax was due until paid, and the tax, damages and interest shall become payable upon notice and demand by the commissioner.

If any part of the deficient or delinquent tax is due to intentional disregard of the provisions of this chapter or authorized rules and regulations promulgated under the provisions of this chapter, or is due to fraud with intent to evade the law, then there may be added as damages fifty percent (50%) of the total amount of the deficiency or delinquency of the tax, and in such case the whole amount of tax unpaid, including the charges so added, shall become due and payable upon notice and demand by the commissioner, and interest of one percent (1%) per month, except as otherwise provided in this section, of the total amount of the deficiency or delinquency of the tax may be added from the date such tax was due until paid. Provided, however, no such damages shall be added if the taxpayer establishes reasonable cause for his negligence or failure to comply. A taxpayer's purported disregard of instructions given through an audit shall not be a basis for the imposition of the penalty provided in this paragraph.

For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

(a) Nine-tenths of one percent (9⁄10 of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;

(b) Eight-tenths of one percent (8⁄10 of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;

(c) Seven-tenths of one percent (7⁄10 of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;

(d) Six-tenths of one percent (6⁄10 of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and

(e) One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

SOURCES: Codes, 1942, § 10119; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 138; Laws, 1944, ch. 129, § 7; Laws, 1952, ch. 403, § 4; Laws, 1955, Ex Sess, ch. 106, § 1; Laws, 1958, ch. 576; Laws, 2012, ch. 566, § 7; Laws, 2014, ch. 476, § 14, effective from and after January 1, 2015.

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage [approved May 23, 2012], and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Notice of taxes and damages for failure to file return, see § 27-65-35.

Notice of assessment of taxes, damages and interest for failure to preserve adequate records of gross income, proceeds, see § 27-65-37.

Penalty for failure or refusal to make return, see § 27-65-85.

RESEARCH REFERENCES

ALR. Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return. 20 A.L.R.4th 952.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 253 et seq.

CJS. 53 C.J.S., Licenses §§ 97-99 et seq.

§ 27-65-40. Effect of state officer's or employee's failure to pay state sales tax.

If any officer or employee of the State of Mississippi, or any political subdivision thereof, does not pay the state sales tax for which he is responsible to pay within two (2) months after such sales tax becomes due and payable, he shall not be eligible to receive any salary or other emoluments of office from this state, or from any political subdivision thereof, until said sales tax, interest and penalty, if any, shall be paid in full. This provision shall apply to any installments of sales tax due, after the first installment, to require payment of the entire balance of tax due, plus interest and penalty, if any, before an officer or employee of the State of Mississippi, or any political subdivision thereof, is eligible to draw any salary or other emoluments of office. The Tax Commissioner is required to furnish the State Fiscal Officer or appropriate fiscal officer of the political subdivision, as the case may be, with notice that sales taxes have not been paid. This notice shall serve as a stop order upon any salary due any employee or officer. Disregard of this notice creating personal liability against such fiscal officer for the full amount of the sales tax due, plus interest and penalty. For purposes of this section, a political subdivision includes, but is not limited to, a county or separate school district, institution of higher learning, state college or university, or state community college. The sales tax may be paid with uncertified check during such time and under such regulations as the Commissioner shall prescribe, but if the check so received is not paid by the bank on which it is drawn, the taxpayer for whom such check is tendered shall remain liable for the payment of the tax and all penalties, the same as if such check had not been tendered.

SOURCES: Laws, 1993, ch. 563, § 4, eff from and after July 1, 1993.

Editor's Note — Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 27-65-41. Tax constitutes a debt.

The tax imposed by this chapter or damages assessed or interest applied by authority of this chapter shall constitute a debt due the State of Mississippi from the time the tax is due until it is paid and shall be a lien upon the property or rights to property of any person subject to the provisions of this chapter including the statute of limitations set forth in Section 27-65-42.

SOURCES: Codes, 1942, § 10119; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 138; Laws, 1944, ch. 129, § 7; Laws, 1952, ch. 403, § 4; Laws, 1955, Ex Sess ch. 106, § 1; Laws, 1958, ch. 576; Laws, 1972, ch. 405, § 1, eff from and after sixty (60) days after passage (approved April 27, 1972).

Cross References — Procedures for appeals from decisions of the State Tax Commission in situations not subject to this section or § 67-1-1 et seq., see § 27-3-29.

Action to recover tax, penalty and interest, see § 27-35-5.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Liability of seller and purchaser of business, certain stock-holders of small business corporations and agents for out-of-state dealers, see § 27-65-55.

Use tax as debt, see § 27-67-21.

JUDICIAL DECISIONS

1. In general.

Liens for state and local taxes antedating federal tax lien are entitled to priority of payment out of bankrupt's assets, though not made the basis of attachment or levy prior to bankruptcy. United States ex rel. IRS v. Bradley, 321 F.2d 224 (5th Cir. 1963).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 240 et seq.

§ 27-65-42. Statute of limitations.

(1) The amount of taxes due on any return which has been filed as required by this chapter shall be determined and assessed within thirty-six (36) months from the date the return was filed except as otherwise provided in this section and Section 27-65-55.

(2) When an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified of the examination, either by certified mail or personal delivery by an agent of the commissioner, within the thirty-six-month examination period provided for in subsection (1) of this section, the determination of the correct tax liability shall be made by the commissioner within one (1) year after the expiration of the thirty-six-month examination period; however, this limitation shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine, and assess at any time the estimated amount of tax due on the return, including any applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return. In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this chapter, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) A taxpayer may apply to the commissioner for revision of the tax assessed against him or her, or paid by him or her, at any time within thirty-six (36) months from the date of the assessment or from the date the return was filed. Unless a claim for credit or refund is filed by the taxpayer within thirty-six (36) months from the time the return was filed or assessment made, no credit or refund shall be allowed.

(4) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable time and location. Refusal or delay by the taxpayer to provide documentation for examination upon the department's request shall result in an assessment being made from any information available, which shall be prima facie correct.

SOURCES: Codes, 1942, § 10119(e); Laws, 1972, ch. 405, § 1; Laws, 1993, ch. 563, § 5; Laws, 2010, ch. 386, § 4; Laws, 2013, ch. 470, § 3; Laws, 2017, ch. 335, § 2, eff from and after Jan. 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first paragraph. The word "taxes" was changed to "tax" in the first sentence. In the second sentence, the word "by" was inserted preceding "certified mail or personal delivery." The Joint Committee ratified the correction at its May 31, 2006, meeting.

Editor's Note — Laws of 2013, ch. 470, § 7, effective January 1, 2013, provides:

"SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective."

Amendment Notes — The 2017 amendment, effective January 1, 2017, added (3), and redesignated former (3) as (4).

Cross References — Tax constitutes a debt, see § 27-65-41.

Penalty for failure or refusal to make return, see § 27-65-85.

JUDICIAL DECISIONS

1. In general.
2. Tolling.

1. In general.

Where the 1955 amendment to the sales tax law was prefaced with an instruction that the section was "amended to read as follows", the legislature thereby evinced an intention to make the new statute a substitute for the old, so that failure to set forth a statute of limitations resulted in the repeal of the prescriptive period stated in the statute before amendment. Lee v. Rhoden, 253 So. 2d 844 (Miss. 1971).

2. Tolling.

Where a law firm employed by the Mississippi State Tax Commission sent a letter to the operator of a gas processing plant stating that the firm was hired to investigate, research, and initiate proceedings against entities which failed to pay applicable severance taxes on revenues received from gas fields based on gas contract settlements, and the letter also requested information from the operator, the letter was sufficient to constitute notice of an examination of the operator and toll the statute of limitations for assessment of taxes, even though the letter appeared to be sent to trigger the firm's fee arrangement with the Commission. In re Pursue Energy Corp., 379 B.R. 100 (Bankr. S.D. Miss. 2006), affirmed by 2007 U.S. Dist. LEXIS 72976 (S.D. Miss. Sept. 28, 2007).

§ 27-65-43. Taxpayer must keep records.

It shall be the duty of every person taxable under this chapter to keep and preserve for a period of three (3) years adequate records of the gross income, gross receipts or gross proceeds of sales of the business, including all invoices of merchandise purchased, all bank statements and cancelled checks, and all other books or accounts as may be necessary to determine the amount of tax for which he is liable. Said records shall be adequate in substance to conform with the provisions of this chapter and the regulations promulgated by the commissioner, and all of such records shall be written in the English language. All records shall be open for examination, at any time, by the commissioner or his duly authorized agent.

The commissioner may require any information or records from computer information systems on media common to those systems. Taxpayers' records may be sampled for audit purposes at the discretion of the commissioner and any assessment rendered as a result of same shall be considered prima facie correct.

The records provided for in this section shall be kept at the taxpayer's principal place of business within this state, and failure to keep and allow examination of such records shall subject the taxpayer to all the penalties of Section 27-65-85 of this chapter.

SOURCES: Codes, 1942, § 10120; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1944, ch. 129, § 8; Laws, 1952, ch. 403, § 5; Laws, 1992, ch. 402, § 1, eff from and after July 1, 1992.

Cross References — Notice of assessment of taxes, damages and interest for failure to preserve adequate records, see § 27-65-37.

JUDICIAL DECISIONS

1. In general.
2. Basis for assessment by commissioner.

1. In general.

The requirement that the taxpayer keep adequate records is a reasonable exercise of legislative power. Monaghan v. Seismograph Serv. Corp., 236 Miss. 278, 108 So. 2d 721 (1959), appeal dismissed and cert. denied, 361 U.S. 35, 80 S. Ct. 137, 4 L. Ed. 2d 111 (1959).

2. Basis for assessment by commissioner.

A taxpayer engaged in local activities in Mississippi which are connected with interstate commerce will not be permitted to commingle its income received from activities in another state with the income received from the activities in Mississippi, and then be heard to complain that taxes are imposed upon unapportioned income, where such unapportionment is due to failure of the taxpayer to keep adequate records as to income received from activities performed in Mississippi, and where the taxpayer may thereby escape paying tax on his income anywhere. Monaghan v. Seismograph Serv. Corp., 236 Miss. 278, 108 So. 2d 721 (1959), appeal dismissed and cert. denied, 361 U.S. 35, 80 S. Ct. 137, 4 L. Ed. 2d 111 (1959).

And the Supreme Court having affirmed the judgment sustaining the tax commission's order approving additional sales tax assessment, a bill for injunction to prevent the sheriff from enforcing such judgment by execution could not be maintained. Viator v. Edwins, 195 Miss. 220, 14 So. 2d 212 (1943), cert. denied, 321 U.S. 744, 64 S. Ct. 518, 88 L. Ed. 1047 (1944), reh'g denied, 321 U.S. 804, 64 S. Ct. 779, 88 L. Ed. 1090 (1944).

Where an assessment is made in accordance with the statute, although erroneous in fact, no personal liability of the chairman of the state tax commission and his assistants results therefrom provided the assessment was made in good faith, the burden of proving that it was not so made being on the complaining taxpayer. Rigby v. Stone, 194 Miss. 775, 11 So. 2d 823 (1943), suggestion of error sustained in part, overruled in part, 194 Miss. 775, 13 So. 2d 230 (1943).

The right and duty of the chairman of the tax commission to make additional assessments for sales taxes does not depend upon whether the taxpayer fails to keep adequate records of his sales, and the only effect of the provision as to inadequate records is to permit the chairman, when the taxpayer's records are inadequate, to determine the correctness of the return made by him "from the best information available." Viator v. State Tax Comm'n, 193 Miss. 266, 5 So. 2d 487 (1942), cert. denied, 316 U.S. 643, 62 S. Ct. 1036, 86 L. Ed. 1728 (1942); Rigby v. Stone, 194 Miss. 775, 11 So. 2d 823 (1943), suggestion of error sustained in part, overruled in part, 194 Miss. 775, 13 So. 2d 230 (1943).

Where assessments or returns of additional sales taxes were made by the chairman of the state tax commission from the best information available where the taxpayer's records were found to be inadequate, and notice was given to the taxpayer setting out the basis for the commissioner's findings supporting such additional assessment, which assessments were approved by the tax commission and the taxpayer was given an opportunity both by the chairman of the commission and by the tax commission itself to negative by evidence the facts on which the assessments were based, the order of the tax commission approving such assessment did not violate the due process clause, since it was not necessary for the tax commission to set forth the facts on which the assessments were made in its order, as against the contention that orders of quasi-judicial commissions and bodies must be supported by a finding of basic fact. Viator v. State Tax Comm'n, 193 Miss. 266, 5 So. 2d 487 (1942), appeal dismissed, cert. denied, 316 U.S. 644, 62 S. Ct. 1109, 86 L. Ed. 1728 (1942), reh'g denied, 316 U.S. 711, 62 S. Ct. 1275, 86 L. Ed. 1777 (1942).

The objection to the sales tax hereunder that the right is given to the chairman of the state tax commission to examine the books, records and papers of the taxpayer in the ascertainment, assessment and collection of the tax, whereas a lessor of property, required under the statute to pay the debt of his lessee has no such right to protect himself against the loss occasioned by the delinquency of the lessee as taxpayer, is untenable, since a lessor may reserve such a right under the lease contract, and may also require that the lessee keep on paying at any and all times during the month a sufficient amount of paid-for petroleum products out of which the tax may be collected by the commissioner and thereby avoid the necessity for a seizure and sale of the premises and fixtures of the owner. Standard Oil Co. v. Stone, 191 Miss. 897, 2 So. 2d 155 (1941).

§§ 27-65-45 through 27-65-49. Repealed.

Repealed by Laws, 2005, ch. 499, § 36 effective from and after July 1, 2005.

§ 27-65-45. [Codes, 1942, § 10121; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1938, ch. 113, 1952, ch. 403, § 6; Laws, 1955, Ex Sess ch. 106, § 2; Laws, 1971, ch. 464, § 1; Laws, 1986, ch. 451, § 5, eff from and after May 1, 1986.]

§ 27-65-47. [Codes, 1942, § 10121.1; Laws, 1971, ch. 464, § 1, eff from and after passage (approved March 30, 1971).]

§ 27-65-49. [Codes, 1942, § 10121.2; Laws, 1971, ch. 464, § 1, eff from and after passage (approved March 30, 1971).]

Editor's Note — Former § 27-65-45 provided for hearings and appeals from certain actions of the State Tax Commission and was entitled: "Rights of taxpayers; board of review."

Former § 27-65-47 provided for hearings and appeals from certain actions of the State Tax Commission and was entitled: "Recovery of improper taxes."

Former § 27-65-49 provided for hearings and appeals from certain actions of the State Tax Commission and was entitled: "Person burdened with illegal tax entitled to relief.

§ 27-65-51. Disbursement from treasury to taxpayer.

In the event a final judgment is rendered in favor of the taxpayer in a suit to recover illegal taxes, and provided the taxpayer is not otherwise indebted to the state, it shall be the duty of the state auditor, upon receipt of a certified copy of the final judgment, to issue a warrant directed to the state treasurer, in favor of the taxpayer, to pay the part of the illegal tax as was paid into the state treasury, and to certify to the treasurer of any municipality, county or other taxing authority as to the amount of the illegal taxes paid to such municipality, county, or other taxing authority having received any part of the illegal tax, who is required hereby to refund the amount of such taxes certified by the auditor, included in the amount for which the judgment was rendered in favor of the taxpayer.

If any municipality, county or other taxing authority, having received any part of taxes for the recovery of which such judgment is rendered, is unable, unwilling or otherwise fails or refuses to make refund of the amount certified by the state auditor to be due such taxpayer, then the commissioner is hereby authorized to withhold from such municipality, county, or other taxing authority, sufficient funds from any subsequent amount which may be due to such municipality, county, or other taxing authority, to cover the amount not refunded to the taxpayer. Any such amount so withheld shall be paid into the state treasury and a warrant issued by the state auditor against such fund in payment of the balance due under the judgment rendered in favor of the taxpayer for such taxes.

SOURCES: Codes, 1942, § 10121.3; Laws, 1971, ch. 464, § 1, eff from and after passage (approved March 30, 1971).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Application of all administrative provisions of the state sales tax law to all persons liable for taxes under the state estate tax law, see § 27-9-39.

Refunding overpayment of taxes, see § 27-65-53.

Refund of taxes generally, see § 27-73-1 et seq.

§ 27-65-53. Refunds.

If the commissioner finds that the taxpayer has overpaid his tax for any reason and the taxpayer has discontinued business and there is no subsequent liability upon which the excess may be credited, or if the amount of the excess so paid shall exceed the estimated liability for the next twelve (12) months, the excess shall be refunded to the taxpayer. Such amount shall be certified to the State Auditor of Public Accounts by the commission. The said auditor is hereby authorized to make such investigation and audit of the claim as he finds necessary. If he finds that the commissioner is correct in his determination, the auditor may issue his warrant to the State Treasurer in favor of the taxpayer for the amount of tax erroneously paid into the State Treasury, such refunds to be made from current sales tax collections. If part of the overpayment has been disbursed to any municipality or state institution of higher learning, under authority of Section 27-65-75, the municipality or state institution of higher learning, having erroneously received the money, shall adjust the amount with the commissioner, or the overpayment may be withheld by the state from any funds due by the state to the municipality or state institution of higher learning.

Provided, that where the taxpayer has overpaid his tax, the commissioner may give credit for same and allow the taxpayer to take credit on a subsequent return or, if necessary, in his discretion, have the taxpayer file for a refund as provided herein.

If any overpayment of tax as reflected in an application or amended return, or both, filed by the taxpayer, and verified by the commissioner or otherwise determined to be due by the commissioner or commission, is not refunded or credited to a taxpayer's account within ninety (90) days after the application or amended return is filed or the date the commission or commissioner determines a refund is due, whichever is later, interest at the rate of one percent (1%) per month shall be allowed on such overpayment computed for the period after expiration of the ninety-day period provided herein to the date of payment.

SOURCES: Codes, 1942, § 10121.4; Laws, 1971, ch. 464, § 1; Laws, 1981, ch. 328, § 2; Laws, 1991, ch. 383, § 1; Laws, 1998, ch. 337, § 2; Laws, 2006, ch. 365, § 2, eff from and after July 1, 2006.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Application of all administrative provisions of the state sales tax law to all persons liable for taxes under the state estate tax law, see § 27-9-39.

Refund of taxes, generally, see § 27-73-1 et seq.

JUDICIAL DECISIONS

1. Interest on refunds.

Chancery court properly determined that the Mississippi Department of Revenue (MDOR) owed a school district interest on its overpayment of severance taxes on oil and gas production from sixteenth-section lands from the date of the Mississippi Supreme Court's opinion because MDOR was statutorily required to pay interest only if it failed to issue a complete refund within 90 days after the later of the submission of an application or when the Commissioner determined a refund was due, and the 90-day time for payment of the refund in the case commenced on the date that the Supreme Court determined the tax was unlawful, which coincided with the date the Commission acted. Wayne Cnty. Sch. Dist. v. Morgan, — So. 3d —, 2017 Miss. LEXIS 104 (Miss. Mar. 16, 2017).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and the Use Taxes § 270.

22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Forms 11 et seq.

19 Am. Jur. Pl & Pr Forms (1st ed), Taxation, Forms 19:572, 19:583.

CJS. 53 C.J.S., Licenses § 91.

§ 27-65-55. Liability of seller and purchaser of business, certain stockholders of small business corporations and agents for out-of-state dealers.

(1) The tax imposed by this chapter shall be a lien upon the property of any person subject to the provisions thereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out the return provided for under Section 27-65-33 within ten (10) days after the date he sold out his business or stock of goods, or quit business, and pay the tax imposed by this chapter. The purchaser or transferee in business

shall be required to withhold sufficient of the purchase money to cover the amount of any taxes, damages and interest due until such time as the former owner shall produce a receipt from the commissioner showing that such liability has been paid, or a certificate that no taxes are due. In the event the former owner shall fail to pay any taxes, damages and interest due the state within the time allowed, the successor in business shall pay such taxes, damages and interest to the commissioner upon demand. If the purchaser or transferee of a business or stock of goods shall fail to withhold purchase money as provided and the taxes, damages and interest shall be due and unpaid after the period of ten (10) days allowed, he shall be personally liable for the payment of taxes, damages and interest of the former owner, and the property sold or transferred may be proceeded against by the commissioner in the hands of the purchaser or transferee as though no sale or transfer had been made.

(2) Persons owning stock of ten percent (10%) or more of the total of corporations or ten percent (10%) interest in limited liability companies with thirty-five (35) or fewer owners and exercising responsibility for fiscal management, also shall be liable for sales taxes levied by this chapter upon such corporations when such taxes become due and unpaid to the extent that such taxes accrued while such person was exercising responsibility for fiscal management. The liability under this subsection is derivative of the corporation or limited liability company, and the thirty-six-month assessment period in Section 27-65-42 will begin to run after the liability of the corporation or limited liability company becomes final. A person being assessed under this subsection may appeal his liability under Section 27-77-5 solely regarding the issue of the ownership interest and management requirements of this subsection. The commissioner shall make assessments against said persons of such taxes, damages and interest, and effect collection by the same procedures herein provided for assessment and collection of all taxes levied by this chapter.

(3) Any person, acting as agent for a dealer who has no permanent place of business in this state, who sells tangible personal property in this state, either at auction or as a transient vendor, shall be liable for collection of sales tax, where applicable, and payment of the same of this state unless the vendor principal is authorized to collect the tax and is registered under Section 27-65-27. Such persons shall maintain for a period of three (3) years adequate records which shall be available for inspection by the commissioner or his agent and which shall reveal the true sales tax liability of all parties to each transaction. Failure to maintain and permit examination of such records shall render the agent liable for sales tax accruing from all sales as determined by the commissioner from any information available. The commissioner shall effect collection by the same procedures herein provided for assessment and collection of all taxes levied by this chapter.

SOURCES: Codes, 1942, § 10122; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1938, ch. 113; Laws, 1946, ch. 262, § 6; Laws, 1952, ch. 403, § 7; Laws, 1958, ch. 574, § 13; Laws, 1977, ch. 439, § 2; Laws, 1988, ch. 491, § 2; Laws, 1994,

ch. 503, § 2; Laws, 1995, ch. 508, § 3; Laws, 2010, ch. 386, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the third sentence of subsection (2). The phrase "assessed under this paragraph" was changed to "assessed under this subsection." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Laws of 1995, ch. 508, § 7, effective July 1, 1995, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before July 1, 1995, whether such claims, assessments, appeals, suits or actions have been begun before July 1, 1995, or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before July 1, 1995, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — When taxes constitute lien, generally, see § 27-35-1.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

JUDICIAL DECISIONS

1. Responsible person.
2.-5. [Reserved for future use.]
6. Under former law.

1. Responsible person.

Debtor was liable for tax debts of a company because debtor, a partner in the company, qualified as a responsible person under Mississippi law and both sales taxes and withholding taxes qualified as trust fund taxes that were nondischargeable. Watson v. Miss. Dep't of Revenue (In re Watson), 556 B.R. 757 (Bankr. S.D. Miss. 2016).

Debtor, a partner in a company, qualified as a responsible person under Mississippi law and was liable for the sales and withholding tax debts of the company because debtor had filed state withholding tax returns on behalf of the company and had taken over all of the day to day operations after his partner left. Watson v. Miss. Dep't of Revenue (In re Watson), 556 B.R. 757 (Bankr. S.D. Miss. 2016).

2.-5. [Reserved for future use.]

6. Under former law.

Sales tax statutes making the place of business, including the permanent fixtures used in such business, liable to seizure and sale when taxes accrued upon the business conducted on the premises should become due and unpaid, even though it did not expressly provide that the tax should be a lien upon the property of the owner of such place of business and fixtures was not a violation of due process of law, in view of provisions therein permitting any person improperly charged with any tax and required to pay the same to recover it in any proper action or suit and entitling the lessor of the premises and fixtures to petition for a hearing if desired upon receipt by him of a demand from the commissioner to pay the delinquent taxes due by the lessee. Standard Oil Co. v. Stone, 191 Miss. 897, 2 So. 2d 155 (1941).

Sales tax statute in rendering liable and subject to seizure and sale the premises and fixtures of a lessor to satisfy the unpaid sales tax due on retail sales made in the conduct of a business when the premises are equipped with permanent fixtures so that no other commodity than that sold by the lessor of such premises can be sold and handled thereat, is not unconstitutionally discriminatory as being applicable only to gasoline filling stations, since there was a reasonable basis for the distinction in such situation and in not rendering liable and subject to seizure and sale the premises and fixtures of the average landlord, for instance, who leases his store building and fixtures to a merchant engaged in selling general commodities thereat other than those sold by the owner of such premises. Standard Oil Co. v. Stone, 191 Miss. 897, 2 So. 2d 155 (1941).

A lessor's property would not be liable to seizure and sale for the tax on any sales made by its lessees which accrued and became payable prior to the effective date of this provision. Standard Oil Co. v. Stone, 191 Miss. 897, 2 So. 2d 155 (1941).

Demurrers to a lessor's petition to recover sales taxes paid under protest on behalf of four of its lessees were properly overruled in view of an allegation therein to the effect that a sufficient amount of gasoline was kept on hand at any one time to cover the tax accrued for the month for which it was assessed, the nonexistence of which fact was necessary to render the place of business, equipment and fixtures of the lessor subject to seizure and sale. Standard Oil Co. v. Stone, 191 Miss. 897, 2 So. 2d 155 (1941).

Gasoline pumps and tanks furnished by an oil company to its lessees are permanent fixtures within the meaning of this section [Code 1942, § 10122], since they are used permanently as a means of distributing the products sold by the lessor and are not such fixtures as may be used one day in the sale of such products and another day for the sale of a commodity not sold by the lessor. Standard Oil Co. v. Stone, 191 Miss. 897, 2 So. 2d 155 (1941).

RESEARCH REFERENCES

ALR. Validity and construction of state statute making successor corporation liable for taxes of predecessor. 65 A.L.R.3d 1181.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 253 et seq.

CJS. 53 C.J.S., Licenses § 50.

§ 27-65-57. Enrolling a judgment.

If any person liable for the payment of sales taxes, damages or interest fails or refuses to pay them after receiving the notice and demand as provided in Sections 27-65-35 and 27-65-37, and if such person has not filed a timely appeal to the board of review as provided by law, the commissioner may file a notice of a tax lien for the sales taxes, damages and interest with the circuit clerk of the county in which the taxpayer resides or owns property which shall be enrolled as a judgment on the judgment roll.

Immediately upon receipt of the notice of the tax lien for sales taxes, damages and interest, the circuit clerk shall enter the notice of a tax lien as a judgment upon the judgment roll and show in the appropriate columns the name of the taxpayer as judgment debtor, the name of the commissioner or State Tax Commission as judgment creditor, the amount of the taxes, damages and interest, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon all property and rights to property belonging to the taxpayer, both real and personal, including choses in action, with the same force and like effect as any enrolled judgment of a court of record, and shall continue until satisfied. The judgment shall be the equivalent of any enrolled judgment of a court of record and shall serve as authority for the issuance of writs of execution, writs of attachment, writs of garnishment or other remedial writs. The commissioner may issue warrants for collection of sales taxes from such judgments, in lieu of the issuance of any remedial writ by the circuit clerk, as provided in Sections 27-65-59 and 27-65-61 hereof; however, such judgment shall not be a lien upon the property of the taxpayer for a longer period than seven (7) years from the date of the filing of the notice of tax lien for sales taxes, damages and interest unless action be brought thereon before the expiration of such time or unless the commissioner refiles the notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the taxpayer for a period of seven (7) years from the date of refiling the notice of tax lien unless action be brought thereon before the expiration of such time or unless the commissioner refiles the notice of tax lien before the expiration of such time. There shall be no limit upon the number of times that the commissioner may refile notices of tax liens.

Upon failure to pay the taxes imposed under this chapter by any taxpayer who has executed any bond under provisions of this chapter, the commissioner shall give notice of the failure to the sureties of the bond and demand payment of the tax, damages and interest within ten (10) days. If the sureties on the taxpayer's bond shall fail or refuse to pay the penal sum demanded within the ten (10) days allowed, the commissioner shall file a notice of tax lien with the circuit clerk of the county in which the sureties reside or own property which shall be enrolled upon the judgment roll, and the commissioner may proceed to collect from the sureties as hereinafter provided for collecting from any judgment debtor.

The commissioner is hereby authorized to pay the clerk's fee for enrolling the notice of tax lien out of funds appropriated by the Legislature to defray expenses of the State Tax Commission.

SOURCES: Codes, 1942, §§ 10123, 10124; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1952, ch. 403, § 8; Laws, 1955, Ex Sess, ch. 106, § 3; Laws, 1990, ch. 332, § 2; Laws, 2005, ch. 499, § 28, eff from and after July 1, 2005.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean Department of Revenue.

Cross References — Enrollment of judgments, generally, see § 11-7-189.

Attachment at law against debtors, see § 11-33-1 et seq.

Garnishment proceedings, see § 11-35-1 et seq.

Executions, generally, see § 13-3-111 et seq.

Authority of state tax commission to file notice of tax liens in same manner and with same effect as liens issued under this section, for failure to pay certain motor vehicle privilege and excise taxes, see § 27-19-136.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Jeopardy assessment and warrant, see § 27-65-61.

JUDICIAL DECISIONS

1. In general.

Where personal property had been seized by the sheriff in satisfaction of enrolled judgment liens of the state tax commission and placed in the lawful possession of the sheriff to satisfy the tax lien judgments, the purchase money lien of the seller of part of the seized property ceased to exist when possession of the property was transferred from the original purchaser to the sheriff who had no notice of the existence of the statutory vendor's lien. Paper Prods. Co. v. Mississippi State Tax Comm'n, 206 So. 2d 635 (Miss. 1968).

RESEARCH REFERENCES

Am Jur. 67B Am. Jur. 2d, Sales and Use Taxes §§ 216 et seq.

CJS. 53 C.J.S., Licenses §§ 84-86 et seq.

§ 27-65-59. Warrant for collection of tax.

The commissioner may issue a warrant under official seal directed to the sheriff of any county of the state, or to a special agent of the commission, commanding him to immediately seize and sell the real and personal property of the person owning the same found within the county in which the judgment is enrolled for the payment of the amount of tax, damages and interest, if any, as set forth in the warrant, and the cost of executing the warrant.

SOURCES: Codes, 1942, § 10125; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1952, ch. 403, § 9; Laws, 1955, Ex Sess, ch. 106, § 4; Laws, 1956, ch. 425, § 1; Laws, 1966, ch. 651, § 1(a); Laws, 1972, ch. 376, § 1, eff from and after passage (approved April 26, 1972).

Cross References — Executions, generally, see § 13-3-111 et seq.

Sheriff's execution and return of process, see § 19-25-37.

Authority of state tax commission to issue warrants in same manner and with same effect as warrants issued under this section, for failure to pay certain assessed motor vehicle privilege and excise taxes, see § 27-19-136.

Action to recover tax, penalty and interest, see § 27-35-5.

Collection of taxes by sale of personalty, generally, see § 27-41-15.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Application of this section to collection of sales taxes due on contracting work, see § 27-65-21.

Enrolling judgment for failure to pay taxes, damages or interest after receiving notice and demand as provided in §§ 27-65-35, 27-65-37, see § 27-65-57.

Jeopardy warrant, see § 27-65-61.

Execution of warrant, see § 27-65-63.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Where personal property had been seized by the sheriff in satisfaction of enrolled judgment liens of the state tax commission and placed in the lawful possession of the sheriff to satisfy the tax lien judgments, the purchase money lien of the seller of part of the seized property ceased to exist when possession of the property was transferred from the original purchaser to the sheriff who had no notice of the existence of the statutory vendor's lien. Paper Prods. Co. v. Mississippi State Tax Comm'n, 206 So. 2d 635 (Miss. 1968).

Under the Sales Tax Act a tax warrant is not the same as a judgment at law, although it does have the effect of a judgment as a summary method of collecting taxes, and also it is not a judgment in the sense that it is res judicata on the question of liability of the taxpayer. Stevens Enters. v. Stone, 226 Miss. 806, 85 So. 2d 461 (1956).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

The statute clearly authorizes the chairman of the state tax commission to appoint deputies and require them to act for him in making assessments of sales on which sales taxes are to be collected. Rigby v. Stone, 194 Miss. 775, 11 So. 2d 823 (1943), suggestion of error sustained in part, overruled in part, 194 Miss. 775, 13 So. 2d 230 (1943).

In an action against the chairman of the state tax commission for damages from sale of goods in the wrongful collection of sales taxes, the burden of proving that no assessment of the sales made by him or that the governing statute was not complied with in the making thereof was on the plaintiff taxpayer. Rigby v. Stone, 194 Miss. 775, 11 So. 2d 823 (1943), suggestion of error sustained in part, overruled in part, 194 Miss. 775, 13 So. 2d 230 (1943).

Where attachment proceedings in chancery were commenced by the state tax collector on behalf of the state against nonresident construction companies, wherein it was sought to make a municipality garnishee, to collect excise taxes claimed to be due from the defendant, to which the municipality was alleged to be indebted, a motion by the municipality to dismiss the proceedings as to it should not have been overruled, since the state collector was without authority to bring proceedings on behalf of the state to collect the tax. City of Natchez v. Craig, 191 Miss. 567, 3 So. 2d 837 (1941).

The state tax collector has been held not entitled to maintain an action for the collection of a gross income tax, on the theory that the sales tax statute should not be so construed as to leave it to the will and discretion of one man — the chairman of the state tax commission — as to whether or not a tax levied thereunder should be collected, and that the granting of such power could never have been intended by the legislature, which argument might be applied to the enforcement of income and inheritance tax laws, involving large sums of revenue due the state each year, although the legislature had expressly declared that these taxes are excepted from those for which the state tax collector might sue. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

The provisions of a former statute that the tax may be collected by action in debt was held not to authorize the state tax collector to sue for the collection of the tax, since a similar provision is to be found in other tax statutes in which the attorney general is named as the one to bring action to collect the tax. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

Under an earlier statute (Laws of 1934, ch 119, § 11) by which the tax was made a debt recoverable by action, such provision was held not of itself determinative of the right of the state tax collector to sue therefor. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

The legislature could authorize the chairman of the state tax commission to bring suit for the collection of the gross income tax, to the exclusion of any other official entitled by law to bring suit to collect past due and unpaid taxes, whose authority was derived solely from statutory enactment, as distinguished from that conferred by the constitution itself. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

It was the evident intention of the legislature that these emergency taxes should go into the state treasury to meet the crisis then impending, and without any deductions of a commission of 20 percent for the collection thereof, and the state tax collector was without authority to maintain a suit to collect a gross income tax. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

The provisions in § 11, Chapter 119, Laws of 1934 (not continued in the present statute) to the effect that the remedies for the collection of the tax "shall be in addition to all other existing remedies," refer to the existing remedies contained in Chapter 90 of Laws of 1932. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

Repeal of 1932 Act imposing privilege taxes measured by gross income or gross sales did not, in view of saving clause in 1934 Act, relieve taxpayer of liability for taxes paid under repealed act. Jackson Fertilizer Co. v. Stone, 173 Miss. 183, 162 So. 170 (1935).

§ 27-65-61. Jeopardy assessment and warrant.

If the commissioner has cause to believe and believes that the collection of taxes due by any taxpayer will be jeopardized by delay, he may assess such taxes immediately, together with damages and interest, and may immediately file with the circuit clerk a notice of tax lien for sales taxes, damages, and interest and issue a jeopardy warrant under official seal directed to the sheriff of any county of this state or to a special agent of the tax commission.

The circuit clerk shall proceed as provided in Section 27-65-57 upon receiving a copy of the notice of tax lien from the commissioner. Any tax determined to be due under a jeopardy assessment shall be a debt due to the state, and, when thus enrolled upon the judgment roll of the county, shall be the equivalent of any enrolled judgment of a court of record, and shall constitute a lien on all property and rights to property of the judgment debtor. The sheriff, or the special agent, as the case may be, upon receipt of the jeopardy warrant, shall immediately proceed in accordance with Section 27-65-63. However, where property has been seized under authority of a jeopardy warrant, the taxpayer may file a petition for a hearing and revision of the assessment with the commissioner at any time prior to the date of the sale, provided such taxpayer executes a supersedeas surety bond in a surety company authorized to do business and doing business in this state for double the amount of the assessment. Such bond shall be conditioned that any taxes, damages, interest and costs adjudged to be due after the hearing will be paid promptly upon order of the state tax commission.

SOURCES: Codes, 1942, § 10125-01; Laws, 1955, Ex Sess, ch. 106, § 4; Laws, 1956, ch. 425, § 1; Laws, 1966, ch. 651, § 1(b); Laws, 1972, ch. 376, § 2, eff from and after passage (approved April 26, 1972).

Cross References — Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Execution of warrant, see § 27-65-63.

JUDICIAL DECISIONS

1. In general.

Neither the statute nor the due process clauses of the state and federal constitutions require the giving of notice and an opportunity to be heard before the issuance of a jeopardy warrant. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

Although there is no requirement in this section [Code 1942, § 10125-01] that notice of immediate assessment made under authority of subsection b be given to the taxpayer by registered mail, that section must be read and considered along with Code 1942, § 10121 which confers upon the commissioner general authority to make an additional assessment and which requires the giving of notice. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

Where foreign corporation, engaged in construction of pipelines for a fixed price, failed to file a bond conditioned for the payment of sales taxes and then was removing all of its property from the state, the tax commissioner had a right to issue a jeopardy warrant authorizing the seizure of the property of the foreign corporation without waiting for expiration of the 10 days within which the taxpayer might petition for a hearing. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

§ 27-65-63. Execution of warrant by sheriff or special agent; fees.

The sheriff or special agent of the Tax Commission, upon receipt of a warrant or a jeopardy warrant, shall immediately seize any property of the taxpayer named in the warrant, in all respects, with like effect, and in the manner prescribed by law with respect to executions of judgments, and he shall execute such warrant and return it to the commissioner, and pay to him the money collected by virtue thereof by the date specified therein, but not to exceed sixty (60) days.

The sheriff or special agent shall be entitled to the fees for his services in the same amount, and to be collected in like manner, as provided by Section 25-7-19, Mississippi Code of 1972, for like services under a writ of execution. Provided, however, that the minimum total of all such fees shall be Ten Dollars ($10.00). All such fees collected by a special agent of the Tax Commission shall be paid to the Tax Commission and deposited in a fund to be expended by the chairman to help defray the costs of carrying out the provisions of this chapter. Provided, further, that when a warrant issued to a sheriff shall be withdrawn by the commissioner prior to its expiration date, the commissioner is authorized to pay to the sheriff the fees allowed by law for services actually performed and costs actually incurred, out of money collected as fees from the taxpayer, or from funds appropriated for the operation of the Tax Commission.

Real property shall be disposed of according to Section 13-3-163, Mississippi Code of 1972, and, except as otherwise provided in this paragraph, personal property shall be disposed of according to Section 13-3-165, Mississippi Code of 1972. However, perishable personal property may be disposed of as provided by Section 13-3-167, Mississippi Code of 1972. In addition to the advertising requirements provided in Section 13-3-165 for the sale of personal property, the Tax Commission may, when the commissioner determines the need to do so, advertise sales of personal property in any additional manner determined appropriate by the commissioner. The costs of any such additional advertising shall be considered a cost of the sale and shall be collected from the proceeds of the sale. The failure to advertise the sale of personal property in any form other than that required by Section 13-3-165 shall not invalidate a sale. For any sale of property by the Tax Commission, the commissioner may determine acceptable methods of payments to be received from the highest bidder for any sale.

SOURCES: Codes, 1942, § 10125-02; Laws, 1955, Ex Sess, ch. 106, § 4; Laws, 1956, ch. 425, § 1; Laws, 1966, ch. 651, § 1(c); Laws, 1972, ch. 376, § 3; Laws, 2002, ch. 404, § 2, eff from and after passage (approved Mar. 19, 2002.)

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean Department of Revenue.

Cross References — When sales of land may be made, and advertising of such sale, see § 13-3-163.

When sales of personal property may be made, and advertising of such sale, see § 13-3-165.

Sale of perishable goods, see § 13-3-167.

Sheriff's execution and return of process, see § 19-25-37.

Sheriff's liability for failure to make return, execute process, or pay over collection, see §§ 19-25-41, 19-25-45.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Jeopardy assessment and warrant, see § 27-65-61.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Fact that sheriff gave only eight days' notice of sale of merchandise for failure to pay sales tax constituted such misconduct that the sheriff was no longer entitled to protection of the writ, and, if sued in trespass, his defense could not rest upon the process nor could it be used in diminution of damages. Rigby v. Whitten, 196 Miss. 661, 18 So. 2d 152 (1944).

Warrant for sale of merchandise for failure to pay sales tax, which was regular on its face and without defect in its contents when considered as a warrant for the sale and not as an assessment, would have protected the sheriff as against any offensive action against him had he proceeded under it as the law directs and without any fault on his part, even though no assessment was made in the manner required by law. Rigby v. Whitten, 196 Miss. 661, 18 So. 2d 152 (1944).

Owner of merchandise sold by sheriff for failure to pay sales tax at sale which was void because the required ten days' notice had not been given, who acquiesced in the sale, gave no notice to the purchaser, and delivered that property to the purchaser, was not entitled as against the sheriff to demand more than the latter received from the purchaser at the sale, and the sheriff was protected to the extent of the amount remitted to the state tax commission as directed by the warrant, but the owner was entitled to the amount retained by the sheriff as costs since the sheriff did not act as the warrant directed. Rigby v. Whitten, 196 Miss. 661, 18 So. 2d 152 (1944).

Where owner of personalty which has been sold under a void warrant of sale, or at an improper time, of which the owner then knows, voluntarily delivers the property to the purchaser or takes active steps to that end without giving any warning or notice whatever at any time or in any manner to purchaser and the latter pays his money without notice, title passes to the purchaser on such delivery and the owner cannot thereafter disturb him. Rigby v. Whitten, 196 Miss. 661, 18 So. 2d 152 (1944).

Where the sheriff is guilty of conversion for the sale of goods in the collection of sales taxes because the sale was not advertised for ten days as provided by statute with respect to sales of personalty, the proper measure of damages, in the absence of special circumstances, is the value of the property, or market value if it has any, at the time and place of its conversion with interest thereon. Rigby v. Stone, 194 Miss. 775, 11 So. 2d 823 (1943), suggestion of error sustained in part, overruled in part, 194 Miss. 775, 13 So. 2d 230 (1943).

§ 27-65-65. Commissioner may bid at sales.

When any property is offered for sale under the authority of a warrant or writ of execution for the collection of sales taxes, damages or interest, and no bid is submitted equal to the reasonable value of the property, the commissioner or his agent may bid therefor on behalf of the State of Mississippi an amount not to exceed the amount of the warrant and costs, and if declared the successful bidder for that particular piece of property, such title as may be conveyed shall pass to the state, and the state's interest in the property may then be sold at public or private sale to the best interest of the state.

SOURCES: Codes, 1942, § 10125-03; Laws, 1955, Ex Sess, ch. 106, § 4; Laws, 1956, ch. 425, § 1; Laws, 1966, ch. 651, § 1(d), eff from and after July 1, 1966.

Cross References — Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

§ 27-65-67. Alias executions.

Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the State of Mississippi for which distraint or seizure is made, the commissioner may, thereafter, and as often as the same may be necessary, issue alias warrants or have issued alias writs of execution authorizing the sheriff or special agent of the tax commission to proceed to seize and sell in like manner any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SOURCES: Codes, 1942, § 10125-04; Laws, 1955, Ex Sess, ch. 106, § 4; Laws, 1956, ch. 425, § 1; Laws, 1966, ch. 651, § 1(e), eff from and after July 1, 1966.

§ 27-65-69. Sheriff and special agent not personally liable.

Every warrant issued to a sheriff of any county of this state, or to a special agent of the State Tax Commission, shall provide that the State Tax Commission will indemnify and save harmless the said sheriff or special agent against all damages which he may sustain in consequence of the seizure and sale of the property, and the commissioner is hereby authorized to pay all obligations which may accrue by reason of the issuance and execution of any warrant authorized by this chapter, out of funds appropriated by the Legislature to defray the expenses of the State Tax Commission. Any claimant shall be barred of any action against the sheriff or special agent of the tax commission for damages sustained by the same as a consequence of the levying of process authorized by this chapter.

SOURCES: Codes, 1942, § 10125-05; Laws, 1955, Ex Sess, ch. 106, § 4; Laws, 1956, ch. 425, § 1; Laws, 1966, ch. 651, § 1(f), eff from and after July 1, 1966.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean Department of Revenue.

Cross References — Sheriff's liability for failure to make return, execute process, or pay over collection, see §§ 19-25-41, 19-25-45.

§ 27-65-71. Enforcement not to be enjoined.

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this chapter, or to restrain the enforcement of this chapter. The provisions of Section 11-13-11, Mississippi Code of 1972, shall not apply to taxes imposed by this chapter.

SOURCES: Codes, 1942, § 10125-06; Laws, 1955, Ex Sess, ch. 106, § 4; Laws, 1956, ch. 425, § 1; Laws, 1966, ch. 651, § 1(g), eff from and after July 1, 1966.

JUDICIAL DECISIONS

1. In general.

Under § 11-13-11, which provides the Chancery Court with jurisdiction over suits by taxpayers to restrain the collection of taxes levied without authority of law, the court has the authority to enjoin the collection or assessment of taxes, and once a complaint has been filed demanding relief of the sort contemplated by § 11-13-11, the Chancery Court has subject matter jurisdiction. The language of § 27-65-71, which purports to bar application of § 11-13-11 to taxes imposed by the sales tax chapter, is only effective if the case fails to meet the legislatively and judicially created requirements necessary to invoke jurisdiction under the latter statute. Marx v. Truck Renting & Leasing Ass'n, 520 So. 2d 1333 (Miss. 1987).

§ 27-65-73. Sales tax as additional tax; remittances; how made.

The tax imposed by this chapter shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this chapter otherwise specifically provided. But no municipality or levee district shall be authorized to levy any tax by virtue of the provisions of this chapter.

All remittances of taxes imposed by this chapter shall be made to the commissioner by bank draft, check, cashier's check, money order or money. The commissioner shall issue his receipts therefor to the taxpayer, when requested, and shall deposit all moneys received in the state treasury on the same day collected. Provided, however, no remittance other than cash shall be final discharge of liability for the tax herein assessed and levied unless and until it has been paid in cash to the commissioner.

The apportionment of tax collections as provided by Section 27-65-75 shall be certified by the state tax commission to the state treasurer to be distributed as provided by law upon warrant of the state auditor or by electronic funds transfer.

SOURCES: Codes, 1942, § 10126; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1984, ch. 478, § 24, eff from and after July 1, 1984.

Editor's Note — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see §§ 7-7-2 and 27-104-6.

Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides that, for purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides that "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Cross References — State depositories, see § 27-105-1 et seq.

§ 27-65-75. Distribution of sales taxes, contractor taxes, motor fuels taxes, and other revenue collected under this chapter.

On or before the fifteenth day of each month, the revenue collected under the provisions of this chapter during the preceding month shall be paid and distributed as follows:

(1)(a) On or before August 15, 1992, and each succeeding month thereafter through July 15, 1993, eighteen percent (18%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to the municipality and paid to the municipal corporation. Except as otherwise provided in this paragraph (a), on or before August 15, 1993, and each succeeding month thereafter, eighteen and one-half percent (18-½%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within a municipal corporation shall be allocated for distribution to the municipality and paid to the municipal corporation. However, in the event the State Auditor issues a certificate of noncompliance pursuant to Section 21-35-31, the Department of Revenue shall withhold ten percent (10%) of the allocations and payments to the municipality that would otherwise be payable to the municipality under this paragraph (a) until such time that the department receives written notice of the cancellation of a certificate of noncompliance from the State Auditor.

A municipal corporation, for the purpose of distributing the tax under this subsection, shall mean and include all incorporated cities, towns and villages.

Monies allocated for distribution and credited to a municipal corporation under this paragraph may be pledged as security for a loan if the distribution received by the municipal corporation is otherwise authorized or required by law to be pledged as security for such a loan.

In any county having a county seat that is not an incorporated municipality, the distribution provided under this subsection shall be made as though the county seat was an incorporated municipality; however, the distribution to the municipality shall be paid to the county treasury in which the municipality is located, and those funds shall be used for road, bridge and street construction or maintenance in the county.

(b) On or before August 15, 2006, and each succeeding month thereafter, eighteen and one-half percent (18-½%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities on the campus of a state institution of higher learning or community or junior college whose campus is not located within the corporate limits of a municipality, shall be allocated for distribution to the state institution of higher learning or community or junior college and paid to the state institution of higher learning or community or junior college.

(c) On or before August 15, 2018, and each succeeding month thereafter until August 14, 2019, two percent (2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within the corporate limits of the City of Jackson, Mississippi, shall be deposited into the Capitol Complex Improvement District Project Fund created in Section 29-5-215. On or before August 15, 2019, and each succeeding month thereafter until August 14, 2020, four percent (4%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within the corporate limits of the City of Jackson, Mississippi, shall be deposited into the Capitol Complex Improvement District Project Fund created in Section 29-5-215. On or before August 15, 2020, and each succeeding month thereafter, six percent (6%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within the corporate limits of the City of Jackson, Mississippi, shall be deposited into the Capitol Complex Improvement District Project Fund created in Section 29-5-215.

(2) On or before September 15, 1987, and each succeeding month thereafter, from the revenue collected under this chapter during the preced-

ing month, One Million One Hundred Twenty-five Thousand Dollars ($1,125,000.00) shall be allocated for distribution to municipal corporations as defined under subsection (1) of this section in the proportion that the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each such municipality during the preceding fiscal year bears to the total gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in municipalities statewide during the preceding fiscal year. The Department of Revenue shall require all distributors of gasoline and diesel fuel to report to the department monthly the total number of gallons of gasoline and diesel fuel sold by them to consumers and retailers in each municipality during the preceding month. The Department of Revenue shall have the authority to promulgate such rules and regulations as is necessary to determine the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each municipality. In determining the percentage allocation of funds under this subsection for the fiscal year beginning July 1, 1987, and ending June 30, 1988, the Department of Revenue may consider gallons of gasoline and diesel fuel sold for a period of less than one (1) fiscal year. For the purposes of this subsection, the term "fiscal year" means the fiscal year beginning July 1 of a year.

(3) On or before September 15, 1987, and on or before the fifteenth day of each succeeding month, until the date specified in Section 65-39-35, the proceeds derived from contractors' taxes levied under Section 27-65-21 on contracts for the construction or reconstruction of highways designated under the highway program created under Section 65-3-97 shall, except as otherwise provided in Section 31-17-127, be deposited into the State Treasury to the credit of the State Highway Fund to be used to fund that highway program. The Mississippi Department of Transportation shall provide to the Department of Revenue such information as is necessary to determine the amount of proceeds to be distributed under this subsection.

(4) On or before August 15, 1994, and on or before the fifteenth day of each succeeding month through July 15, 1999, from the proceeds of gasoline, diesel fuel or kerosene taxes as provided in Section 27-5-101(a)(ii)1, Four Million Dollars ($4,000,000.00) shall be deposited in the State Treasury to the credit of a special fund designated as the "State Aid Road Fund," created by Section 65-9-17. On or before August 15, 1999, and on or before the fifteenth day of each succeeding month, from the total amount of the proceeds of gasoline, diesel fuel or kerosene taxes apportioned by Section 27-5-101(a)(ii)1, Four Million Dollars ($4,000,000.00) or an amount equal to twenty-three and one-fourth percent (23-¼%) of those funds, whichever is the greater amount, shall be deposited in the State Treasury to the credit of the "State Aid Road Fund," created by Section 65-9-17. Those funds shall be pledged to pay the principal of and interest on state aid road bonds heretofore issued under Sections 19-9-51 through 19-9-77, in lieu of and in substitution for the funds previously allocated to counties under this section. Those funds may not be pledged for the payment of any state aid road bonds

issued after April 1, 1981; however, this prohibition against the pledging of any such funds for the payment of bonds shall not apply to any bonds for which intent to issue those bonds has been published for the first time, as provided by law before March 29, 1981. From the amount of taxes paid into the special fund under this subsection and subsection (9) of this section, there shall be first deducted and paid the amount necessary to pay the expenses of the Office of State Aid Road Construction, as authorized by the Legislature for all other general and special fund agencies. The remainder of the fund shall be allocated monthly to the several counties in accordance with the following formula:

(a) One-third (⅓) shall be allocated to all counties in equal shares;

(b) One-third (⅓) shall be allocated to counties based on the proportion that the total number of rural road miles in a county bears to the total number of rural road miles in all counties of the state; and

(c) One-third (⅓) shall be allocated to counties based on the proportion that the rural population of the county bears to the total rural population in all counties of the state, according to the latest federal decennial census.

For the purposes of this subsection, the term "gasoline, diesel fuel or kerosene taxes" means such taxes as defined in paragraph (f) of Section 27-5-101.

The amount of funds allocated to any county under this subsection for any fiscal year after fiscal year 1994 shall not be less than the amount allocated to the county for fiscal year 1994.

Any reference in the general laws of this state or the Mississippi Code of 1972 to Section 27-5-105 shall mean and be construed to refer and apply to subsection (4) of Section 27-65-75.

(5) One Million Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars ($1,666,666.00) each month shall be paid into the special fund known as the "State Public School Building Fund" created and existing under the provisions of Sections 37-47-1 through 37-47-67. Those payments into that fund are to be made on the last day of each succeeding month hereafter.

(6) An amount each month beginning August 15, 1983, through November 15, 1986, as specified in Section 6, Chapter 542, Laws of 1983, shall be paid into the special fund known as the Correctional Facilities Construction Fund created in Section 6, Chapter 542, Laws of 1983.

(7) On or before August 15, 1992, and each succeeding month thereafter through July 15, 2000, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited by the department into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section

27-65-17(2), shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars ($42,000,000.00). Thereafter, the amounts diverted under this subsection (7) during the fiscal year in excess of Forty-two Million Dollars ($42,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(8) On or before August 15, 1992, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the Education Enhancement Fund created under Section 37-61-33.

(9) On or before August 15, 1994, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, Two Hundred Fifty Thousand Dollars ($250,000.00) shall be paid into the State Aid Road Fund.

(10) On or before August 15, 1994, and each succeeding month thereafter through August 15, 1995, from the revenue collected under this chapter during the preceding month, Two Million Dollars ($2,000,000.00) shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(11) Notwithstanding any other provision of this section to the contrary, on or before February 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(12) Notwithstanding any other provision of this section to the contrary, on or before August 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(1) on retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101 and the corresponding levy in Section 27-65-23 on the rental or lease of these vehicles, shall be deposited, after diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(13) On or before July 15, 1994, and on or before the fifteenth day of each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-22 that is derived from activities held on the Mississippi State Fairgrounds Complex shall be paid into a special fund that is created in the State Treasury and shall be expended upon legislative appropriation solely to defray the costs of repairs and renovation at the Trade Mart and Coliseum.

(14) On or before August 15, 1998, and each succeeding month thereafter through July 15, 2005, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited in an amount not to exceed Two Million Dollars ($2,000,000.00) into the special fund created under Section 69-37-39. On or before August 15, 2007, and each succeeding month thereafter through July 15, 2010, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited in an amount not to exceed Two Million Dollars ($2,000,000.00) into the special fund created under Section 69-37-39 until all debts or other obligations incurred by the Certified Cotton Growers Organization under the Mississippi Boll Weevil Management Act before January 1, 2007, are satisfied in full. On or before August 15, 2010, and each succeeding month thereafter through July 15, 2011, fifty percent (50%) of that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited into the special fund created under Section 69-37-39 until such time that the total amount deposited into the fund during a fiscal year equals One Million Dollars ($1,000,000.00). On or before August 15, 2011, and each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited into the special fund created under Section 69-37-39 until such time that the total amount deposited into the fund during a fiscal year equals One Million Dollars ($1,000,000.00).

(15) Notwithstanding any other provision of this section to the contrary, on or before September 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-19(1)(d)(i)2, and 27-65-19(1)(d)(i)3 shall be deposited, without diversion, into the Telecommunications Ad Valorem Tax Reduction Fund established in Section 27-38-7.

(16)(a) On or before August 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a project as defined in Section 57-30-1 shall be deposited, after all diversions except the diversion provided for in subsection (1) of this section, into the Sales Tax Incentive Fund created in Section 57-30-3.

(b) On or before August 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-26-1 through 57-26-5, shall be deposited, after the diversions required in subsections (7) and (8) of this section, into the Tourism Project Sales Tax Incentive Fund created in Section 57-26-3.

(17) Notwithstanding any other provision of this section to the contrary, on or before April 15, 2002, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under Section 27-65-23 on sales of parking services of parking garages and lots at airports shall be deposited, without diversion, into the special fund created under Section 27-5-101(d).

(18) [Repealed]

(19)(a) On or before August 15, 2005, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and the revenue collected on the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11 (provided that such sales made to a business enterprise are made on the premises of the business enterprise), shall, except as otherwise provided in this subsection (19), be deposited, after all diversions, into the Redevelopment Project Incentive Fund as created in Section 57-91-9.

(b) For a municipality participating in the Economic Redevelopment Act created in Sections 57-91-1 through 57-91-11, the diversion provided for in subsection (1) of this section attributable to the gross proceeds of sales of a business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and attributable to the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11 (provided that such sales made to a business enterprise are made on the premises of the business enterprise), shall be deposited into the Redevelopment Project Incentive Fund as created in Section 57-91-9, as follows:

(i) For the first six (6) years in which payments are made to a developer from the Redevelopment Project Incentive Fund, one hundred percent (100%) of the diversion shall be deposited into the fund;

(ii) For the seventh year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, eighty percent (80%) of the diversion shall be deposited into the fund;

(iii) For the eighth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, seventy percent (70%) of the diversion shall be deposited into the fund;

(iv) For the ninth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, sixty percent (60%) of the diversion shall be deposited into the fund; and

(v) For the tenth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, fifty percent (50%) of the funds shall be deposited into the fund.

(20) On or before January 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the

preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-28-1 through 57-28-5 shall be deposited, after the diversions required in subsections (7) and (8) of this section, into the Tourism Sales Tax Incentive Fund created in Section 57-28-3.

(21)(a) On or before April 15, 2007, and each succeeding month thereafter through June 15, 2013, One Hundred Fifty Thousand Dollars ($150,000.00) of the sales tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the MMEIA Tax Incentive Fund created in Section 57-101-3.

(b) On or before July 15, 2013, and each succeeding month thereafter, One Hundred Fifty Thousand Dollars ($150,000.00) of the sales tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the Mississippi Development Authority Job Training Grant Fund created in Section 57-1-451.

(22) Notwithstanding any other provision of this section to the contrary, on or before August 15, 2009, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-201 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(23) The remainder of the amounts collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Fund.

(24)(a) It shall be the duty of the municipal officials of any municipality that expands its limits, or of any community that incorporates as a municipality, to notify the commissioner of that action thirty (30) days before the effective date. Failure to so notify the commissioner shall cause the municipality to forfeit the revenue that it would have been entitled to receive during this period of time when the commissioner had no knowledge of the action.

(b)(i) Except as otherwise provided in subparagraph (ii) of this paragraph, if any funds have been erroneously disbursed to any municipality or any overpayment of tax is recovered by the taxpayer, the commissioner may make correction and adjust the error or overpayment with the municipality by withholding the necessary funds from any later payment to be made to the municipality.

(ii) Subject to the provisions of Sections 27-65-51 and 27-65-53, if any funds have been erroneously disbursed to a municipality under subsection (1) of this section for a period of three (3) years or more, the maximum amount that may be recovered or withheld from the municipality is the total amount of funds erroneously disbursed for a period of three (3) years beginning with the date of the first erroneous disbursement. However, if during such period, a municipality provides written notice to the Department of Revenue indicating the erroneous disbursement of funds, then the maximum amount that may be recovered or withheld from the municipality is the total amount of funds erroneously disbursed for a period of one (1) year beginning with the date of the first erroneous disbursement.

SOURCES: Codes, 1942, § 10127; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1950, ch. 391; Laws, 1952, ch. 289; Laws, 1955, Ex Sess, ch. 107; Laws, 1960, ch. 366; Laws, 1962, ch. 599, § 3; Laws, 1966, ch. 652, § 1; Laws, 1968, ch. 588, § 11; Laws, 1972, ch. 535, § 1; Laws, 1974, ch. 509, § 1; Laws, 1978, ch. 503, § 1; Laws, 1979, chs. 302, § 10, 453, § 1; Laws, 1981, ch. 464, § 20; Laws, 1983, ch. 542, § 1; Laws, 1984, ch. 488, § 178; Laws, 1985, ch. 537, § 1; Laws, 1987, ch. 322, § 28; Laws, 1987, ch. 527, § 1; Laws, 1988, ch. 353; Laws 1992, ch. 419, § 8; Laws 1992, ch. 565, § 1; Laws 1993, ch. 473, § 2; Laws 1994, ch. 557, § 12; Laws 1994, ch. 563, § 8; Laws 1994, ch. 570, § 20; Laws 1994, ch. 565, § 1; Laws 1995, ch. 521, § 5; Laws 1995, ch. 563, § 22; Laws 1997, ch. 566, § 1; Laws 1997, ch. 612, § 26; Laws 1998, ch. 584, § 2; Laws, 1999, ch. 535, § 1; Laws, 1999, ch. 575, § 7; Laws, 2000, ch. 303, § 7; Laws, 2000, ch. 616, § 3; Laws, 2000, ch. 617, § 1; Laws, 2002, ch. 434, § 1; Laws, 2002, ch. 520, § 4; Laws, 2002, ch. 582, § 7; Laws, 2003, ch. 540, § 1; Laws, 2004, ch. 595, § 9; Laws, 2005, ch. 369, § 1; Laws, 2005, ch. 468, § 10; Laws, 2005, 2nd Ex Sess, ch. 2, § 4; Laws, 2005, 5th Ex Sess, ch. 12, § 5; Laws, 2006, ch. 365, § 1; Laws, 2006, 1st Ex Sess, ch. 2, § 7; Laws, 2007, ch. 303, § 26; Laws, 2007, ch. 493, § 1; Laws, 2007, ch. 562, § 1; Laws, 2007, ch. 574, § 4; Laws, 2007, 1st Ex Sess, ch. 1, § 16; Laws, 2009, ch. 562, § 4; Laws, 2010, ch. 449, § 10; Laws, 2010, ch. 459, § 1; Laws, 2011, ch. 432, § 1; Laws, 2013, ch. 447, § 3; Laws, 2013, ch. 537, § 3; Laws, 2016, ch. 361, § 1; Laws, 2017, ch. 444, § 11, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of ch. 535, Laws of 1999, effective from and after July 1, 1999, amended this section. Section 7 of ch. 575, Laws of 1999, effective from and after its passage (approved April 21, 1999), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 535, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 7 of ch. 303, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 3 of ch. 616, Laws of 2000, effective from and after July 2, 2000, also amended this section. Section 1 of ch. 617, Laws of 2000, effective from and after July 1, 2000, also amended this section. As set out above, this section reflects the language of Section 3 of ch. 616, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (15). The reference to "Section 27-65-19(f)" was changed to "Section 27-65-19(1)(f)." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Section 1 of ch. 434, Laws of 2002, effective from and after its passage (approved March 20, 2002), amended this section. Section 4 of ch. 520, Laws of 2002, effective from and after August 1, 2002 (approved April 1, 2002), also amended this section. Section 7 of ch. 582, Laws of 2002, effective from and after August 1, 2002 (approved April 11, 2002), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 582, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the later approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 369, Laws of 2005, effective from and after July 1, 2005 (approved March 15, 2005), amended this section. Section 10 of ch. 468, Laws of 2005, effective January 1, 2005 (approved March 29, 2005), also amended this section. As set out above, this section reflects the language of Section 10 of ch. 468, Laws of 2005, pursuant to its own terms, which specifically provide that the language of the act supercedes that in Section 1 of ch. 369, Laws of 2005.

Section 26 of ch. 303, Laws of 2007, effective upon passage (approved March 13, 2007), amended this section. Section 1 of ch. 493, Laws of 2007, effective July 1, 2007 (approved March 27, 2007), also amended this section. Section 1 of ch. 562, Laws of 2007, effective upon passage (approved April 20, 2007), amended this section. Section 4 of ch. 574, Laws of 2007, effective July 1, 2007 (approved April 21, 2007) also amended this section. As set out above, this section reflects the language of Section 4 of ch. 574, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 10 of ch. 449, Laws of 2010, effective July 1, 2010 (approved March 30, 2010), amended this section. Section 1 of ch. 459, Laws of 2010, effective July 1, 2010 (approved April 1, 2010), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Section 3 of Chapter 447, Laws of 2013, effective from and after passage (approved March 25, 2013), amended this section. Section 3 of Chapter 537, Laws of 2013, effective from and after July 1, 2014 (approved April 23, 2013), also amended this section. As set out above, this section reflects the language of Section 3 of Chapter 537, Laws of 2013, which contains language that specifically provides that it supersedes § 27-65-75 as amended by Section 3 of Chapter 447.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subdivision (15) by substituting "27-65-19(1)(d)(i)3" for "27-65-19(d)(i)3." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Editor's Note — Sections 19-9-51 through 19-9-77, referred to in subsection (4), were repealed by Laws of 1985, ch. 477, § 20, effective from and after April 8, 1985.

Laws of 1983, ch. 542, § 2, effective from and after passage (approved April 25, 1983), provides as follows:

"SECTION 2. The State Highway Department is authorized to utilize from any available funds any amount necessary to offset the loss of revenue from the reduced diversion of sales tax collections to the State Highway Fund pursuant to Section 1 of this act."

Laws of 1983, ch. 542, § 6, referred to in paragraph (6) of this section, was classified as a Temporary Law, and was not published in the Mississippi Code.

Laws of 1990, Chapter 588, § 72, which amended this section effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not been printed in this volume. Text of the amendment can be found in the Advance Sheet Acts of the 1990 Legislative Session published by the Secretary of State's Office, Jackson, Mississippi.

Laws of 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

See Section 65-39-35 for events which must occur for reductions in certain taxes and rates to take effect.

House Bill No. 1617, 1994 Regular Session, referred to in this section, was not enacted into law during the 1994 Regular Session.

Section 1 of ch. 566, Laws of 1997, amended this section, effective July 1, 1997. Section 26 of ch. 612, Laws of 1997, effective July 1, 2002, also amended this section. As set out above, the first version of this section, effective July 1, 1997, reflects the language of Section 1 of ch. 566, Laws of 1997 and the second version, effective July 1, 2002, reflects the language of Section 26 of ch. 612.

Laws of 1997, ch. 612, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Section 27-5-105, referred to in (4)(c), was repealed by Laws of 1987, ch. 527, § 4, effective from and after September 1, 1987.

Laws of 2000, ch. 303, §§ 11 and 12, provide:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect.

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Laws of 2002, ch. 520, § 5 provides that §§ 1 and 4 of the act shall apply only to customer bills issued after August 1, 2002.

Laws of 2003, ch. 556, § 4, as amended by Laws of 2004, ch. 595, § 10, and as amended by Laws of 2005, 2nd Ex Sess, ch. 2, § 5, provides:

"SECTION 4. (1) There is created in the State Treasury a special fund to be known as the Special Funds Transfer Fund, which shall be comprised of the monies required to be deposited into the fund under Section 27-65-75(18) for the repayment of certain funds transferred to the Budget Contingency Fund. Upon receipt of monies deposited into the fund under Section 27-65-75(18), the State Treasurer shall transfer those monies to the special funds from which transfers were made under Sections 2 and 3 of Chapter 556, Laws of 2003.

"(2) Unexpended amounts remaining in the fund on September 30, 2008, shall lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund."

Section 27-65-15, referred to in (1)(a) and (b), was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Laws of 2007, ch. 561, § 2, provides as follows:

"SECTION 2. Section 4 of Chapter 556, Laws of 2003, as amended by Section 10 of Chapter 595, Laws of 2004, as amended by Section 5 of Chapter 2, Laws of Second Extraordinary Session of 2005, which created the Special Funds Transfer Fund, is repealed."

Former (18) was repealed by its own terms, effective May 11, 2007.

Laws of 2009, ch. 562, § 6, as amended by Laws of 2009, 2nd Ex Sess, ch. 89, § 1, provides as follows:

"SECTION 6. Sections 1 and 2 of this act shall take effect and be in force from and after May 15, 2009. Sections 3, 4 and 5 of this act shall take effect and be in force from and after July 1, 2009, if a bill appropriating not less than $27,000,000.00 for fiscal year 2010 to the Motor Vehicle Ad Valorem Tax Reduction Fund is enacted into law."

Section 21 of Senate Bill No. 2045, Laws of 2009, 2nd Ex Sess, effective July 1, 2009, transferred $27,000,000.00 of the amount appropriated to the Tax Commission to the Motor Vehicle Ad Valorem Tax Reduction Fund, meeting the condition in the effective date of Section 6 of ch. 562, Laws of 2009.

Laws of 2013, ch. 537, § 6, as amended by Laws of 2014, ch. 530, § 41, effective July 1, 2014, provides:

"SECTION 6. (1) Except as otherwise provided in subsection (2) of this section, nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"(2) The exemptions authorized in Section 1 of this act shall apply to all sales billed by the provider from and after July 1, 2014."

Section 57-101-3, referred to in (21)(a), created the MMEIA Tax Incentive Fund. It was repealed by Laws of 2013, ch. 447, § 24, effective July 1, 2013, and all money in the MMEIA Tax Incentive Fund was transferred to the Mississippi Development Authority Job Training Grant Fund. See § 57-1-451 and notes thereunder.

Amendment Notes — The 2016 amendment, in the first paragraph of (1)(a), added the exception at the beginning of the second sentence, and added the last sentence; and in (24), designated the former first two sentences as (a) and the last sentence as (b)(i) and therein added the exception at the beginning, and added (b)(ii).

The 2017 amendment added (1)(c); and made minor stylistic changes.

Cross References — Report and payment of state collections into state treasury, see § 7-9-21.

Requirement that the state tax commission withhold all allocations otherwise payable under this section if a certificate of noncompliance to a county has been issued, see § 19-2-11.

Apportionment of tax collections, see § 27-3-57.

Apportionment of amount of fuel taxes as specified in this section to division of state aid road construction fund, see § 27-5-101.

Deposit of certain monies specified in this section into the Motor Vehicle Ad Valorem Tax Reduction Fund, see § 27-51-105.

Excise tax on gasoline, see § 27-55-11.

Monthly reports and remittances of gasoline and other motor fuel taxes, see § 27-55-13.

Adjustment of municipal distribution for refunds, see § 27-65-53.

Distribution of use taxes and other funds received under the provisions of Article 1, Chapter 67, Title 27, see § 27-67-31.

Authorization for borrowing to cover costs of construction or reconstruction of highways designated under § 65-3-97, when revenues designated under §§ 27-5-101, 27-19-99, 27-19-325, 27-57-37, 27-65-75, and 65-3-97 are insufficient to fund construction priorities under Four-Lane Highway Program, see § 31-17-127.

Deposit of revenues collected pursuant to this section into Education Enhancement Fund, see § 37-61-33.

Deposit of proceeds collected pursuant to this section into School Ad Valorem Tax Reduction Fund, see § 37-61-35.

Pledge of sales tax reimbursement for repayment of loan made under water pollution abatement grant program, see § 49-17-65.

Pledge of part of sales tax reimbursement for repayment of loan for construction of waste disposal plant, see § 49-17-65.

Water Pollution Control Revolving Fund, see § 49-17-87.

Ineligibility of entities that are convicted of hiring illegal immigrants for certain forms of assistance under this section and repayment of assistance required under this section, see § 57-1-373.

Incentive payments to persons, corporations, or other entities that incur indebtedness to locate certain tourism projects in Mississippi, see §§ 57-26-3, 57-28-3.

Incentive payments to persons, corporations, or other entities that incur indebtedness to locate certain family-oriented enterprises in Mississippi, see § 57-30-3.

Pledge of revenue distribution for repayment of loan for freight rail service project, see § 57-44-7.

Forfeiture by municipality of right to receive sales tax allocation as result of failing to meet loan repayment obligations under the Mississippi Business Investment Act, see § 57-61-15.

County entitlement to state aid funds, see § 65-9-17.

Accounts and utilization of state aid funds in connection with state aid roads in counties, see § 65-9-30.

Mississippi Boll Weevil Management Act generally, see § 69-37-1 et seq.

JUDICIAL DECISIONS

1. In general.

Municipalities' claim that Laws of 2000, Ch. 304, "amended by implication" Miss. Code Ann. § 27-65-75 in violation of Miss. Const. Art. 4, § 61 failed, as Miss. Const. Art. 4, § 61 had no reference to amendment by implication when the amending statute is complete within itself, as was Laws of 2000, Ch. 304. City of Belmont v. Miss. State Tax Comm'n, 860 So. 2d 289 (Miss. 2003).

Laws of 2000, ch. 304, § 3, which abates any suits brought by a municipality to recover additional payments under Miss. Code Ann. § 27-65-75 in excess of the amounts authorized in Laws of 2000, ch. 304, does not violate the separation of powers doctrine, as the legislature did not revive the right to bring the same suit in the name of another. City of Belmont v. Miss. State Tax Comm'n, 860 So. 2d 289 (Miss. 2003).

A class action by citizens and taxpayers of Mississippi, on behalf of themselves and certain counties within the state, to enjoin the distribution among all counties of excise tax funds collected by and belonging to the state, was not a suit against the state by its citizens prohibited by the Eleventh Amendment to the United States Constitution. Schaeffer v. Sharp, 328 F. Supp. 762 (S.D. Miss. 1971).

Citizens and taxpayers of Mississippi, on behalf of themselves and certain counties within the state, did not constitute the real parties in interest entitled to institute and maintain an action to enjoin the distribution among counties of excise tax funds collected by and belonging to the state, where the plaintiffs could show no more than a general interest in common with all members of the public. Schaeffer v. Sharp, 328 F. Supp. 762 (S.D. Miss. 1971).

No county has any vested right in any portion of the gasoline tax money except such right as the legislature may grant, and the legislature has the power to distribute a portion of the tax in any manner, upon any basis, and under any formula which it may prescribe. Schaeffer v. Sharp, 328 F. Supp. 762 (S.D. Miss. 1971).

A county may not irrevocably pledge, for the payment of bonds, gasoline taxes which are required by law to be deposited in the state treasury to its credit. Williford v. Board of Supvrs., 243 Miss. 304, 138 So. 2d 299 (1962).

§ 27-65-76. Repealed.

Repealed by Laws of 1987, ch 322, § 31, effective from and after September 1, 1987 (See Editor's Note below).

[En Laws, 1985, ch 537, § 2]

Editor's Note — Laws of 1987, ch. 322, § 31, repealed this section effective August 1, 1987. Subsequently, Laws of 1987, ch. 527, § 5, advanced the repeal date to September 1, 1987.

Former § 27-65-76 provided for deposits to credit of State Highway Fund.

§ 27-65-77. Repealed.

Repealed by Laws of 1985, ch. 455, § 14, effective from and after March 29, 1985.

[Codes, 1942, § 10128; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158]

Editor's Note — Former § 27-65-77 required the auditor to check the books and records of the commissioner.

§ 27-65-79. Records; preserved.

The commissioner shall keep full and accurate records of all moneys received by him, and how disbursed. He shall preserve all returns or a reproduction of such returns filed with him under Sections 27-65-31 and 27-65-33 of this chapter for a period of three (3) years.

SOURCES: Codes, 1942, § 10129; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1984, ch. 458, § 4, eff from and after July 1, 1984.

Cross References — Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

§ 27-65-81. Returns confidential; release of certain information under certain circumstances.

(1) Applications, returns and information contained therein filed or furnished under this chapter shall be confidential, and except in accordance with proper judicial order, or as otherwise authorized by this section or as authorized by Section 27-4-3, it shall be unlawful for the Commissioner of Revenue or any deputy, agent, clerk or other officer or employee of the Department of Revenue or Department of Information Technology Services, or any former employee thereof, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed on any application, report or return required.

The term "proper judicial order" as used in this section shall not include subpoenas or subpoenas duces tecum but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted.

(2) Such information contained on the application, returns or reports may be furnished to:

(a) Members and employees of the Department of Revenue and the income tax department thereof, for the purpose of checking, comparing and correcting returns;

(b) The Attorney General, or any other attorney representing the state in any action in respect to the amount of tax under the provisions of this chapter;

(c) The revenue department of other states or the federal government when said states or federal government grants a like comity to Mississippi.

(3) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the Department of Revenue, and the same prohibitions against disclosure which apply to the Department of Revenue shall apply to the State Auditor and his office.

(4) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(5) Information required by the University Research Center to prepare the analyses required by Sections 57-13-101 through 57-13-109 shall be furnished to the University Research Center upon request. It shall be unlawful for any officer or employee of the University Research Center to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the center from the Department of Revenue other than as may be required by Sections 57-13-101 through 57-13-109 in an analysis prepared pursuant to Sections 57-13-101 through 57-13-109.

(6) Information required by the Mississippi Development Authority to prepare the reports required by Section 57-1-12.2 shall be furnished to the Mississippi Development Authority upon request. It shall be unlawful for any officer or employee of the Mississippi Development Authority to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the Mississippi Development Authority from the Department of Revenue other than as may be required by Section 57-1-12.2 in a report prepared pursuant to Section 57-1-12.2.

(7) Information necessary to comply with Chapter 13, Title 85 may be furnished to financial institutions. It shall be unlawful for any officer or employee of the financial institution to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the financial institution from the Department of Revenue other than as may be authorized by Chapter 13, Title 85.

(8) Nothing in this section shall prohibit the Commissioner of Revenue from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16.

(9) The Department of Revenue is authorized to disclose to the Child Support Unit and to the Fraud Investigation Unit of the Department of Human Services without the need for a subpoena or proper judicial order the name, address, social security number, amount of income, amount of sales tax, source of income, assets and other relevant information, records and tax forms for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101 or who are under investigation for fraud or abuse of any state or federal program or statute as provided in Section 43-1-23.

SOURCES: Codes, 1942, §§ 10130, 10131; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1952, ch. 403, § 10; Laws, 1975, ch. 516, § 4; Laws, 1984, ch. 458, § 5: 1988, ch. 349, § 5; Laws, 2010, ch. 385, § 4; Laws, 2010, ch. 388, § 5; Laws, 2010, ch. 481, § 3; Laws, 2014, ch. 517, § 11; Laws, 2017, ch. 407, § 8, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 3 of ch. 481, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), amended this section. Section 5 of ch. 388, Laws of 2010, effective July 1, 2010 (approved March 17, 2010) and Section 4 of ch. 385, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 481, Laws of 2010, which contains language that specifically provides that it supersedes the amendments to § 27-65-81 by Laws of 2010, chs. 385 and 388.

Amendment Notes — The 2017 amendment added (7) and redesignated the remaining subsections accordingly.

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

JUDICIAL DECISIONS

1. In general.

An intention on the part of the legislature to permit the state tax collector to bring a suit for the enforcement of the Sales Tax Act was not disclosed by a provision preventing the divulging of tax information except to members and employees of the state tax commission and the income tax department thereof, or the governor or attorney general, or "any other legal representative of the state" in respect to the amount of tax due on the theory that "on any other legal representative of the state" could have no reference to any other legal representatives than the state tax collector; In determining what is meant by such reference, it must be borne in mind that the statute elsewhere provides that the claim of the state tax commission may require the assistance of, and act through, not only the attorney general, but the prosecuting attorney of any county, or any district attorney, or any attorney for the commission, or any special counsel employed by the commission, and that the attorneys above named are the only legal representatives mentioned in the act through which the commissioner is authorized to proceed to enforce the provisions of the Act. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

§ 27-65-83. Repealed.

Repealed by Laws of 2001, ch. 429, § 3, effective from and after passage (approved March 13, 2001).

[Codes, 1942, § 10132; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1952, ch. 403, § 11, eff May 1, 1952.]

Editor's Note — Former § 27-65-83 required the Secretary of State to withhold the issuance of any certificate of dissolution or withdrawal for a corporation until the receipt of a notice from the Chairman of the State Tax Commission to the effect that sales taxes levied against the corporation had been paid.

§ 27-65-85. Penalties for failure to comply with the chapter.

(1) It shall be unlawful for:

(a) Any person to engage or continue in any business for which a tax is imposed by this chapter without procuring a license as required by Section 27-65-27 of this chapter, or after such license has been revoked, or who shall fail or refuse to make the return provided to be made in Section 27-65-33 of this chapter;

(b) Any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax imposed by this chapter, or any part thereof;

(c) Any person to aid or abet another in any attempt to evade the payment of the tax imposed by this chapter, or any part thereof;

(d) The president, vice president, secretary or treasurer of any company to make or permit to be made for any company or association any false return, or any false statement in any return required by this chapter with the intent to evade the payment of the tax due;

(e) Any person to represent to any retailer that purchases of merchandise are for resale, causing the retailer to not collect the tax imposed by this chapter, when in fact the purchase is being made for the use of the person;

(f) Any person to use another person's permit to engage in business issued under Section 27-65-27 for the purpose of avoiding the payment of taxes imposed by this chapter;

(g) Any person to use an exemption authorized under this chapter for the purpose of avoiding the payment of tax he is required to pay under this chapter;

(h) Any person to fail or refuse to permit the examination of any book, paper, account, record or other data by the commissioner, or his duly appointed agent, as required by this chapter, including the records of any common carrier, bank, wholesale or retail dealer in any kind of merchandise whether in regard to his own or another's return;

(i) To fail or refuse to permit the inspection or appraisal of any property by the commissioner or his duly appointed agent;

(j) To refuse to offer testimony or produce any record as required by this chapter;

(k) Any person using the public roads and highways of this state for the transportation of merchandise for sale, whether such person be a contract carrier or operating a private vehicle, other than a common carrier operating under the Interstate Commerce Commission or the Mississippi Public Service Commission, and having a permanent office in this state where proper records of merchandise transported are kept and available for inspection by the commissioner or his agents, to fail to have in his or her possession at all times while such merchandise is being transported, and allow inspection of, the invoices or sales tickets correctly disclosing the nature and quantity of such merchandise and the consignor and consignee of each article being transported. However, the records of a common carrier shall be open for inspection at any time for the purpose of obtaining any information bearing upon the administration of this chapter. In the case of any vehicle engaged in the transportation of merchandise for sale, neither belonging to nor operated by a regulated common carrier and not keeping complete records in this state, the commissioner or his authorized agents may examine any invoices or sales tickets carried by the person in charge of the vehicle, and may compare them with the character and quantity of merchandise being transported and the consignee thereof, for the purpose of ascertaining whether or not the provisions of law are being complied with. The absence of such invoices or delivery or sales tickets indicating to whom said merchandise belongs, or is to be delivered, in the hands of such person so engaged in transporting the merchandise, shall be prima facie evidence that such person is transporting such merchandise in violation of this chapter and liable for all penalties imposed under this section.

(2) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned not exceeding six (6) months in the county jail, or punished by both such fine and imprisonment, at the discretion of the court. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return or statement shall be guilty of the offense of perjury and, on conviction thereof, shall be punished in the manner provided by law.

(3) The commissioner may require the attendance of any person and take his testimony with respect to any matter pertaining to any taxpayer's liability for taxes under this chapter, with power to administer oaths to such person or persons. If any person summoned as a witness shall fail to obey any summons to appear before the commissioner or his authorized agent, or shall refuse to testify or answer any material question or to produce any book, record, paper or other data when required to do so, the failure or refusal shall be reported to

the Attorney General, the district attorney or county attorney, who shall thereupon institute proceedings in the circuit court of the county where such witness resides to compel obedience to any summons of the commissioner, or his authorized agent. The proceedings shall be by petition for citation to the person refusing to obey such summons, to show cause why the person should not be required to obey such summons. The circuit judge of the district may hear such petition in termtime or vacation upon two (2) days' notice to the person sought to be cited; and the circuit judge may enter such order as he may deem proper, and punish any failure to comply with the order as for any other contempt of the court. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the justice courts; and such compensation shall be paid from the proper appropriation for the administration of this chapter.

SOURCES: Codes, 1942, § 10133; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1938, ch. 113; Laws, 1952, ch. 403, § 12, eff May 1, 1952; Laws, 2007, ch. 384, § 1, eff from and after July 1, 2007.

Cross References — Subpoena for witnesses, generally, see §§ 13-3-93, 99-9-11.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Specific penalties for deficient or delinquent return, see § 27-65-39.

Requirement of keeping records, see § 27-65-43.

Execution of collection warrants, see § 27-65-63.

Authority of special agents designated by commissioner as to warrants issued under authority of this chapter, see § 27-65-91.

Tax upon sale or use of motor vehicles, see § 27-65-201.

Crime of perjury, see § 97-9-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Jury instructions.

Appellate court disagreed with defendant's contention that by refusing his proposed instructions, which elaborated on the meaning of the terms "willfully" and "intent," respectively, the trial court failed to instruct the jury as to "willfully attempts," an essential element of tax evasion from Miss. Code Ann. § 27-3-79(2), and as a result, defendant, although convicted of a felony, was only found guilty of a misdemeanor offense, pursuant to Miss. Code Ann. § 27-65-85. The instructions that were given properly satisfied the statutory language of "willfully attempts;" defendant was properly convicted of felonies. King v. State, 897 So. 2d 981 (Miss. Ct. App. 2004), writ of certiorari denied by 896 So. 2d 373, 2005 Miss. LEXIS 224 (Miss. 2005).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 253 et seq.

§ 27-65-87. Administration of the chapter vested in the Commissioner of Revenue.

The administration of this chapter is vested in and shall be exercised by the Commissioner of Revenue of the Department of Revenue, except as otherwise herein provided, and the enforcement of any of the provisions of this chapter in any of the courts of the state shall be under the exclusive jurisdiction of the Commissioner of Revenue of the Department of Revenue who may require the assistance of an act through the Attorney General, prosecuting attorney of any county, or any district attorney, or any attorney for the Department of Revenue, and may with the assent of the Governor, employ special counsel in any county to aid the prosecuting attorney, the compensation of whom shall be fixed by and paid only upon the approval of the Governor; but the Attorney General, district attorney or prosecuting attorney of any county shall receive no fees or compensation for services rendered in enforcing this chapter in addition to the salary paid to such officer.

In case of violation of the provisions of this chapter, the commissioner may decline to prosecute for the first offense, if in his judgment such violation is not willful or flagrant.

SOURCES: Codes, 1942, § 10134; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1938, ch. 113; Laws, 1952, ch. 403, § 13, eff May 1, 1952; Laws, 2009, ch. 492, § 105, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Suits for taxes by attorney general, district attorneys, or county attorneys, see § 7-5-55.

City utility tax law, see § 21-33-201 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Application of all administrative provisions of the state sales tax law to all persons liable for taxes under the state estate tax law, see § 27-9-39.

Action to recover tax, penalty and interest, see § 27-35-5.

Administration of use tax law, see § 27-67-31.

JUDICIAL DECISIONS

1. In general.
2. Actions to collect tax.
3. Injunction.

1. In general.

Public policy forbids the enforcement of a contract between a taxpayer and an auditor employed by the state tax commission, under which such auditor agreed to assist the taxpayer in recovering sales taxes illegally collected of which he was to receive one third of the amount recovered. Independent Linen Serv. Co. v. Sennett, 194 Miss. 366, 12 So. 2d 530 (1943).

A contract between a taxpayer and an auditor employed by the state tax commission, under which the latter agreed to assist the taxpayer in obtaining refunds of sales taxes illegally collected of which he was to receive one-third, violated the implications of this section [Code 1942, § 10134], as tending to thwart the public purpose of the statute, which was not only to collect the sales tax imposed but to enable the state to appropriate the tax to its fiscal needs. Independent Linen Serv. Co. v. Sennett, 194 Miss. 366, 12 So. 2d 530 (1943).

This provision, whereby administration of the Sales Tax law is vested in the state tax commission and the enforcement thereof is required to be under its exclusive jurisdiction, takes precedence over the general statute defining the powers and limiting the authority of the state tax collector to sue for past due taxes. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

The application of this section [Code 1942, § 10134] is not restricted to prosecutions in the criminal courts. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

2. Actions to collect tax.

The rule that where an unauthorized person brings an action in the name of another, who has not consented thereto, the court does not acquire jurisdiction of the plaintiff, is applicable in a suit by the state tax collector to collect excise taxes by the aid of attachment proceedings, where the state has not consented for its collector to appear for it in such a suit, but by the statute has expressly withheld such consent. City of Natchez v. Craig, 191 Miss. 567, 3 So. 2d 837 (1941).

Where no one authorized to do so had invoked the action of the court on behalf of the state for the collection of excise taxes sought to be recovered in attachment proceedings, the court should not act sua sponte. City of Natchez v. Craig, 191 Miss. 567, 3 So. 2d 837 (1941).

3. Injunction.

The state on the relation of the attorney general was entitled to mandatory injunction requiring retail merchants to obey statute imposing tax on their sales, notwithstanding violation of statute is a criminal offense, where failure to obey statute was impairing the efficiency of state tax collector in ascertaining and collecting tax, since state was without an adequate remedy at law. State ex rel. Rice v. Allen, 180 Miss. 659, 177 So. 763 (1938).

§ 27-65-89. Employees appointed by commissioner.

The Commissioner of Revenue of the Department of Revenue shall appoint, as needed, such deputies, agents, clerks and stenographers as authorized by law, who shall serve under him, and shall perform such duties as may be required by the commissioner, including the signing of notices, warrants and such other documents as may be specifically designated by the commissioner, not inconsistent with this chapter, and they are hereby authorized to act for the commissioner, as he may prescribe and as provided herein. All of such agents, clerks and stenographers may be removed by the Commissioner of Revenue of the Department of Revenue for cause of which the commissioner shall be the final judge.

SOURCES: Codes, 1942, § 10135; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1938, ch. 113; Laws, 1942, ch. 122; Laws, 1952, ch. 403, § 14; Laws, 1966, ch. 651, § 3; Laws, 2009, ch. 492, § 106, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides: "SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Execution of collection warrants by special agents, see § 27-65-63.

§ 27-65-91. Special agents designated by commissioner; authority.

The commissioner shall designate certain special agents appointed hereunder and evidenced by a written certificate of appointment under the seal of the tax commission, of which judicial notice shall be taken by all courts of this state. Such agents, when in possession of a warrant issued under authority of this chapter, shall have all the powers and duties of the sheriff in enforcing the provisions of the chapter relating to the warrant thus issued, and in making arrests of persons obstructing or seeking to obstruct the execution of such warrant, or in serving any writ, notice or order connected with the enrolled judgment for which the warrant is issued by whatever officer or authority of court issued.

SOURCES: Codes, 1942, § 10136; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1938, ch. 113; Laws, 1942, ch. 122; Laws, 1952, ch. 403, § 14; Laws, 1966, ch. 651, § 3, eff from and after July 1, 1966.

Cross References — Applicability of special agent's authority in execution of warrants and orders issued to collect certain assessed motor vehicle privilege and excise taxes, see § 27-19-136.

Application of this section to the user tax on natural gas, compressed gas, and locomotive fuel, see § 27-59-313.

Execution of collection warrants, see § 27-65-63.

§ 27-65-93. Commissioner to make regulations.

(1) The commissioner shall, from time to time, promulgate rules and regulations, not inconsistent with the provisions of the sales tax law, for making returns and for the ascertainment, assessment and collection of the tax imposed by the sales tax law as he may deem necessary to enforce its provisions; and, upon request, he shall furnish any taxpayer with a copy of the rules and regulations.

(2) All forms, necessary for the enforcement of the sales tax law, shall be prescribed, printed and furnished by the commissioner.

(3) The commissioner may adopt rules and regulations providing for the issuance of permits to manufacturers, utilities, construction contractors, companies receiving bond financing through the Mississippi Business Finance Corporation or the Mississippi Development Authority, and other taxpayers as determined by the commissioner to purchase tangible personal property taxed under Section 27-65-17, items taxed under Section 27-65-18, items taxed under Section 27-65-19, services taxed under Section 27-65-23, items taxed under Section 27-65-24, and items taxed under Section 27-65-26 without the payment to the vendor of the tax imposed by the sales and use tax laws, and providing for persons to report and pay the tax directly to the commissioner in instances where the commissioner determines that these provisions will facilitate and expedite the collection of the tax at the proper rates which may be due on purchases by the permittee. Under the provisions of this chapter, the vendor is relieved of collecting and remitting the taxes specified hereunder and the person holding the permit shall become liable for such taxes instead of the seller. The full enforcement provisions of the sales tax law shall apply in the collection of the tax from the permittee.

SOURCES: Codes, 1942, § 10137; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1948, ch. 446, § 2; Laws, 1950, ch. 531; Laws, 1952, ch. 403, § 15; Laws, 1966, ch. 653, § 1; Laws, 1995, ch. 508, § 4; Laws, 1996, ch. 383, § 1; Laws, 2004, ch. 351, § 2; Laws, 2005, ch. 420, § 1; Laws, 2009, ch. 332, § 5; Laws, 2010, ch. 449, § 4, eff from and after July 1, 2010.

Cross References — Application of all administrative provisions of the state sales tax law to all persons liable for taxes under the state estate tax law, see § 27-9-39.

Seller's obligation to collect sales and use taxes, see §§ 27-65-31, 27-67-11.

Mississippi Development Authority generally, see § 57-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

Laws of 2000, ch. 304, does not violate the non-delegation doctrine by setting no standards to guide the Mississippi State Tax Commission (MSTC) in their calculations regarding diversions due municipalities, since Miss. Code Ann. § 27-65-93 authorizes the Commissioner of the MSTC to promulgate rules and regulations deemed necessary to enforce the provisions of § 27-65-93. City of Belmont v. Miss. State Tax Comm'n, 860 So. 2d 289 (Miss. 2003).

An assessment for sales taxes was properly imposed on the gross proceeds received by an oil company from oil field services rendered by it as co-owner/operator for other co-owners of various oil and gas properties in the state, which proceeds represented charges to the other co-owners for their proportionate share of the cost incurred in providing the oil field services, including a reasonable fee for supervision, even though the oil company contended that its main business was discovering, producing and marketing oil, gas and minerals, that its services as an operator in conjunction with co-owners was incidental to its main business, and that it was not permitted to make a profit on its oil field services, where the company received a benefit in its operation as co-owner/operator in that it was able to develop, produce and market oil, gas and minerals in an efficient operation, which involved less expense and waste to it; such benefit and advantage came within the § 27-65-9 definition of business. Brady v. Getty Oil Co., 376 So. 2d 186 (Miss. 1979).

ATTORNEY GENERAL OPINIONS

State Tax Commission is vested with authority and responsibility to enforce provisions of Mississippi Sales Tax Law, but Mississippi Department of Agriculture and Commerce has no authority nor responsibility thereunder to ensure collection of fees. Ross, Apr. 22, 1993, A.G. Op. #93-0252.

§ 27-65-95. Prior rights or actions not affected by this chapter.

Nothing in this chapter shall affect or defeat any distribution, claim, assessment, appeal, suit, right or cause of action for taxes, due or accrued under Sections 27-65-1 through 27-65-95, Mississippi Code of 1972, prior to July 1, 1974, whether such distribution, assessment, appeal, suit, claim or action shall have been begun before July 1, 1974, or shall thereafter be begun; and the provisions of Sections 27-65-1 through 27-65-95, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and distribution of any taxes due or accrued under said Sections 27-65-1 through 27-65-95, Mississippi Code of 1972, and amendments thereto, prior to July 1, 1974, and for the imposition of any penalties, forfeitures or claims for a failure to comply therewith.

SOURCES: Codes, 1942, §§ 10111.5, 10138; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1950, ch. 516, §§ 1-4; Laws, 1952, ch. 367 (subsection 1); Laws, 1955, Ex Sess. ch. 106, § 5; ch. 109, § 19; Laws, 1956, ch. 419, § 5; ch. 420, § 2; ch. 421, § 2; ch. 425, § 2; Laws, 1957, Ex Sess. ch. 20, § 2; Laws, 1958, chs. 575, § 3, 574, § 15; Laws, 1962, chs. 596, §§ 2, 4, 597, §§ 2, 4, 601, §§ 2, 4, 602, §§ 2, 4, 598, §§ 2, 4, and 599, § 4; Laws, 1964, chs. 530, § 3, 531, § 5, 532, § 6, 533, § 2; Laws, 1965, Ex. Sess. ch. 22, § 6; Laws, 1966, chs. 651, § 4, 654, § 1; Laws, 1968, ch. 588, §§ 15, 17; Laws, 1970, ch. 547, § 2; Laws, 1974, ch. 509, § 2, eff from and after July 1, 1974.

Editor's Note — §§ 27-65-15, 27-65-16, 27-65-29, 27-65-45 through 27-65-49, 27-65-76, 27-65-77, and 27-65-83, included within the span of sections referenced above, have been repealed.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Purpose and intent of the former section [Code 1942, § 10111.5] was to provide that a municipality might, under certain conditions, impose a sales tax without holding an election. Seal v. City of Tupelo, 234 Miss. 192, 105 So. 2d 457 (1958).

The resolution need not fix the effective date of the tax although it fixes a date other than the first day of a month as the date for filing a petition requesting an election. Seal v. City of Tupelo, 234 Miss. 192, 105 So. 2d 457 (1958).

Repeal of 1932 Act imposing privilege taxes measured by gross income or gross sales, did not, in view of saving clause in 1934 Act, relieve taxpayer of liability for taxes paid under repealed act. Jackson Fertilizer Co. v. Stone, 173 Miss. 183, 162 So. 170 (1935).

§ 27-65-97. Erroneous diversion of collected sales tax monies to municipality with population of 500 or less.

Any payment made erroneously by the State Tax Commission, as a diversion from sales tax monies collected, to a municipality with a total population of five hundred (500) or less according to the most recent federal census shall not be charged back to such municipality by the State Tax Commission.

SOURCES: Laws, 1986, ch. 451, § 7, eff from and after May 1, 1986.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean Department of Revenue.

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 237 et seq.

§ 27-65-101. Exemptions; industrial [Paragraph (1)(pp) repealed effective July 1, 2022].

(1) The exemptions from the provisions of this chapter which are of an industrial nature or which are more properly classified as industrial exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by the provisions of the Constitution of the United States or the State of Mississippi. No industrial exemption as now provided by any other section except Section 57-3-33 shall be valid as against the tax herein levied. Any subsequent industrial exemption from the tax levied hereunder shall be provided by amendment to this section. No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21.

The tax levied by this chapter shall not apply to the following:

(a) Sales of boxes, crates, cartons, cans, bottles and other packaging materials to manufacturers and wholesalers for use as containers or shipping materials to accompany goods sold by said manufacturers or wholesalers where possession thereof will pass to the customer at the time of sale of the goods contained therein and sales to anyone of containers or shipping materials for use in ships engaged in international commerce.

(b) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) to a manufacturer for use directly in manufacturing or processing a product for sale or rental or repairing or reconditioning vessels or barges of fifty (50) tons load displacement and over. For the purposes of this exemption, electricity used directly in the electrolysis process in the production of sodium chlorate shall be considered a raw material. This exemption shall not apply to any property used as fuel except to the extent that such fuel comprises by-products which have no market value.

(c) The gross proceeds of sales of dry docks, offshore drilling equipment for use in oil or natural gas exploration or production, vessels or barges of fifty (50) tons load displacement and over, when the vessels or barges are sold by the manufacturer or builder thereof. In addition to other types of equipment, offshore drilling equipment for use in oil or natural gas exploration or production shall include aircraft used predominately to transport passengers or property to or from offshore oil or natural gas exploration or production platforms or vessels, and engines, accessories and spare parts for such aircraft.

(d) Sales to commercial fishermen of commercial fishing boats of over five (5) tons load displacement and not more than fifty (50) tons load displacement as registered with the United States Coast Guard and licensed by the Mississippi Commission on Marine Resources.

(e) The gross income from repairs to vessels and barges engaged in foreign trade or interstate transportation.

(f) Sales of petroleum products to vessels or barges for consumption in marine international commerce or interstate transportation businesses.

(g) Sales and rentals of rail rolling stock (and component parts thereof) for ultimate use in interstate commerce and gross income from services with respect to manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof).

(h) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) used or consumed directly in manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof). This exemption shall not apply to any property used as fuel.

(i) Sales of machinery or tools or repair parts therefor or replacements thereof, fuel or supplies used directly in manufacturing, converting or repairing ships, vessels or barges of three thousand (3,000) tons load displacement and over, but not to include office and plant supplies or other equipment not directly used on the ship, vessel or barge being built, converted or repaired. For purposes of this exemption, "ships, vessels or barges" shall not include floating structures described in Section 27-65-18.

(j) Sales of tangible personal property to persons operating ships in international commerce for use or consumption on board such ships. This exemption shall be limited to cases in which procedures satisfactory to the commissioner, ensuring against use in this state other than on such ships, are established.

(k) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-51-5, which are located in a county or portion thereof designated as an enterprise zone pursuant to Sections 57-51-1 through 57-51-15.

(*l*) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-54-5.

(m) Income from storage and handling of perishable goods by a public storage warehouse.

(n) The value of natural gas lawfully injected into the earth for cycling, repressuring or lifting of oil, or lawfully vented or flared in connection with the production of oil; however, if any gas so injected into the earth is sold for such purposes, then the gas so sold shall not be exempt.

(o) The gross collections from self-service commercial laundering, drying, cleaning and pressing equipment.

(p) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified companies, certified as such by the Mississippi Development Authority under Section 57-53-1.

(q) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Three areas (as such term is defined in Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this paragraph (q).

(r)(i) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi and creating a minimum of twenty (20) jobs at the new headquarters in this state. The Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this subparagraph (i).

(ii) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company expanding or making additions after January 1, 2013, to its national or regional headquarters within the State of Mississippi and creating a minimum of twenty (20) new jobs at the headquarters as a result of the expansion or additions. The Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this subparagraph (ii).

(s) The gross proceeds from the sale of semitrailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles if exported from this state within forty-eight (48) hours and registered and first used in another state.

(t) Gross income from the storage and handling of natural gas in underground salt domes and in other underground reservoirs, caverns, structures and formations suitable for such storage.

(u) Sales of machinery and equipment to nonprofit organizations if the organization:

(i) Is tax exempt pursuant to Section 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(ii) Assists in the implementation of the contingency plan or area contingency plan, and which is created in response to the requirements of Title IV, Subtitle B of the Oil Pollution Act of 1990, Public Law 101-380; and

(iii) Engages primarily in programs to contain, clean up and otherwise mitigate spills of oil or other substances occurring in the United States coastal and tidal waters.

For purposes of this exemption, “machinery and equipment” means any ocean-going vessels, barges, booms, skimmers and other capital equipment used primarily in the operations of nonprofit organizations referred to herein.

(v) Sales or leases of materials and equipment to approved business enterprises as provided under the Growth and Prosperity Act.

(w) From and after July 1, 2001, sales of pollution control equipment to manufacturers or custom processors for industrial use. For the purposes of this exemption, “pollution control equipment” means equipment, devices, machinery or systems used or acquired to prevent, control, monitor or reduce air, water or groundwater pollution, or solid or hazardous waste as required by federal or state law or regulation.

(x) Sales or leases to a manufacturer of motor vehicles or powertrain components operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi) or Section 57-75-5(f)(xxii) of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal and natural gas used directly in the manufacture of motor vehicles or motor vehicle parts or used to provide climate control for manufacturing areas.

(y) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement thereon to an enterprise operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi), Section 57-75-5(f)(xxii) or Section 57-75-5(f)(xxviii) and any other sales or leases required to establish or operate such project.

(z) Sales of component materials and equipment to a business enterprise as provided under Section 57-64-33.

(aa) The gross income from the stripping and painting of commercial aircraft engaged in foreign or interstate transportation business.

(bb) [Repealed]

(cc) Sales or leases to an enterprise owning or operating a project that has been designated by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xviii) of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal and natural gas used directly in the manufacturing/production operations of the project or used to provide climate control for manufacturing/production areas.

(dd) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement thereon to an enterprise owning or operating a project that has been designated by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xviii) and any other sales or leases required to establish or operate such project.

(ee) Sales of parts used in the repair and servicing of aircraft not registered in Mississippi engaged exclusively in the business of foreign or interstate transportation to businesses engaged in aircraft repair and maintenance.

(ff) Sales of component materials used in the construction of a facility, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to a permanent business enterprise operating a data/information enterprise in Tier Three areas (as such areas are designated in accordance with Section 57-73-21), meeting minimum criteria established by the Mississippi Development Authority.

(gg) Sales of component materials used in the construction of a facility, or any addition or improvement thereto, and sales of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the facility or any addition or improvement thereto, to technology intensive enterprises for industrial purposes in Tier Three areas (as such areas are designated in accordance with Section 57-73-21), as certified by the Department of Revenue. For purposes of this paragraph, an enterprise must meet the criteria provided for in Section 27-65-17(1)(f) in order to be considered a technology intensive enterprise.

(hh) Sales of component materials used in the replacement, reconstruction or repair of a building or facility that has been destroyed or sustained extensive damage as a result of a disaster declared by the Governor, sales of machinery and equipment to be used therein to replace machinery or equipment damaged or destroyed as a result of such disaster, including, but not limited to, manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, to enterprises or companies that were eligible for the exemptions authorized in paragraph (q), (r), (ff) or (gg) of this subsection during initial construction of the building that was destroyed or damaged, which enterprises or companies are certified by the Department of Revenue as being eligible for the exemption granted in this paragraph.

(ii) Sales of software or software services transmitted by the Internet to a destination outside the State of Mississippi where the first use of such software or software services by the purchaser occurs outside the State of Mississippi.

(jj) Gross income of public storage warehouses derived from the temporary storage of raw materials that are to be used in an eligible facility as defined in Section 27-7-22.35.

(kk) Sales of component building materials and equipment for initial construction of facilities or expansion of facilities as authorized under Sections 57-113-1 through 57-113-7 and Sections 57-113-21 through 57-113-27.

(*ll*) Sales and leases of machinery and equipment acquired in the initial construction to establish facilities as authorized in Sections 57-113-1 through 57-113-7.

(mm) Sales and leases of replacement hardware, software or other necessary technology to operate a data center as authorized under Sections 57-113-21 through 57-113-27.

(nn) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of the construction of the facility, to be used in the facility, to permanent business enterprises operating a facility producing renewable crude oil from biomass harvested or produced, in whole or in part, in Mississippi, which businesses meet minimum criteria established by the Mississippi Development Authority. As used in this paragraph, the term "biomass" shall have the meaning ascribed to such term in Section 57-113-1.

(oo) Sales of supplies, equipment and other personal property to an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is the host organization coordinating a professional golf tournament played or to be played in this state and the supplies, equipment or other personal property will be used for purposes related to the golf tournament and related activities.

(pp) Sales of materials used in the construction of a health care industry facility, as defined in Section 57-117-3, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-117-3. This paragraph shall be repealed from and after July 1, 2022.

(qq) Sales or leases to a manufacturer of automotive parts operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxviii) of machinery and equipment; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal, nitrogen and natural gas used directly in the manufacture of automotive parts or used to provide climate control for manufacturing areas.

(rr) Gross collections derived from guided tours on any navigable waters of this state, which include providing accommodations, guide services and/or related equipment operated by or under the direction of the person providing the tour, for the purposes of outdoor tourism. The exemption provided in this paragraph (rr) does not apply to the sale of tangible personal property by a person providing such tours.

(ss) Retail sales of truck-tractors and semitrailers used in interstate commerce and registered under the International Registration Plan (IRP) or any similar reciprocity agreement or compact relating to the proportional registration of commercial vehicles entered into as provided for in Section 27-19-143.

(tt) Sales exempt under the Facilitating Business Rapid Response to State Declared Disasters Act of 2015 (Sections 27-113-1 through 27-113-9).

(uu) Sales or leases to an enterprise and its affiliates operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxix) of:

(i) All personal property and fixtures, including without limitation, sales or leases to the enterprise and its affiliates of:

1. Manufacturing machinery and equipment;

2. Special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes;

3. Component building materials, machinery and equipment used in the construction of buildings, and any other additions or improvements to the project site for the project;

4. Nonmanufacturing furniture, fixtures and equipment (inclusive of all communications, computer, server, software and other hardware equipment); and

5. Fuel, supplies (other than nonmanufacturing consumable supplies and water), electricity, nitrogen gas and natural gas used directly in the manufacturing/production operations of such project or used to provide climate control for manufacturing/production areas of such project;

(ii) All replacements of, repair parts for or services to repair items described in subparagraph (i)1, 2 and 3 of this paragraph; and

(iii) All services taxable pursuant to Section 27-65-23 required to establish, support, operate, repair and/or maintain such project.

(vv) Sales or leases to an enterprise operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxx) of:

(i) Purchases required to establish and operate the project, including, but not limited to, sales of component building materials, machinery and equipment required to establish the project facility and any additions or improvements thereon; and

(ii) Machinery, special tools (such as dies, molds, and jigs) or repair parts thereof, or replacements and lease thereof, repair services thereon, fuel, supplies and electricity, coal and natural gas used in the manufacturing process and purchased by the enterprise owning or operating the project for the benefit of the project.

(ww) Sales of component materials used in the construction of a building, or any expansion or improvement thereon, sales of machinery and/or equipment to be used therein, and sales of processing machinery and equipment which is permanently attached to the ground or to a permanent foundation which is not by its nature intended to be housed in a building structure, no later than three (3) months after initial startup, expansion or improvement of a permanent enterprise solely engaged in the conversion of natural sand into proppants used in oil and gas exploration and development with at least ninety-five percent (95%) of such proppants used in the production of oil and/or gas from horizontally drilled wells and/or horizontally drilled recompletion wells as defined in Sections 27-25-501 and 27-25-701.

(2) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a

building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this subsection, shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter.

(3) Sales of component materials used in the construction of a facility, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to a permanent business enterprise operating a data/information enterprise in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses meet minimum criteria established by the Mississippi Development Authority, shall be exempt from one-half (½) of the taxes imposed on such transaction under this chapter.

(4) Sales of component materials used in the construction of a facility, or any addition or improvement thereto, and sales of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to technology intensive enterprises for industrial purposes in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this subsection, shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter. For purposes of this subsection, an enterprise must meet the criteria provided for in Section 27-65-17(1)(f) in order to be considered a technology intensive enterprise.

(5)(a) For purposes of this subsection:

(i) "Telecommunications enterprises" shall have the meaning ascribed to such term in Section 57-73-21;

(ii) "Tier One areas" mean counties designated as Tier One areas pursuant to Section 57-73-21;

(iii) "Tier Two areas" mean counties designated as Tier Two areas pursuant to Section 57-73-21;

(iv) "Tier Three areas" mean counties designated as Tier Three areas pursuant to Section 57-73-21; and

(v) "Equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than three hundred eighty-four (384) kilobits per second in at least one (1) direction, including, but not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment.

(b) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2020, that is installed in Tier One areas and used in the deployment of broadband technologies shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter.

(c) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2020, that is installed in Tier Two and Tier Three areas and used in the deployment of broadband technologies shall be exempt from the taxes imposed on such transactions under this chapter.

(6) Sales of component materials used in the replacement, reconstruction or repair of a building that has been destroyed or sustained extensive damage as a result of a disaster declared by the Governor, sales of machinery and equipment to be used therein to replace machinery or equipment damaged or destroyed as a result of such disaster, including, but not limited to, manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, to enterprises that were eligible for the partial exemptions provided for in subsections (2), (3) and (4) of this section during initial construction of the building that was destroyed or damaged, which enterprises are certified by the Department of Revenue as being eligible for the partial exemption granted in this subsection, shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter.

SOURCES: Laws, 1978, ch. 347, § 3; Laws, 1980, ch. 500, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 41; Laws, 1983, ch. 475, § 10, ch. 491, § 10, ch. 546, § 3; Laws, 1984, ch. 381, § 7; Laws, 1984, ch. 458, § 6; Laws, 1985, ch. 516, § 3; Laws, 1986, ch. 410, § 3; Laws, 1987, ch. 454, § 1; Laws, 1989, ch. 524, § 20; Laws, 1990, ch. 525, § 1; Laws, 1992, ch. 462, § 2; Laws, 1992, ch. 548 § 2; Laws, 1994, ch. 510, § 1; Laws, 1998, ch. 526, § 1; Laws, 1999, ch. 450, § 2; Laws, 2000, ch. 516, § 5; Laws, 2000, 2nd Ex Sess, ch. 1, § 51; Laws, 2000, 3rd Ex Sess, ch. 1, § 14; Laws, 2002, ch. 464, § 8; Laws, 2003, ch. 464, § 1; Laws, 2003, ch. 520, § 5; Laws, 2004, ch. 469, § 2; Laws, 2004, ch. 528, § 6; Laws, 2005, ch. 315, § 4; Laws, 2005, ch. 486, § 2; Laws, 2005, 3rd Ex Sess, ch. 1 § 65; Laws, 2007, ch. 303, § 15; Laws, 2007, ch. 503, § 1; Laws, 2007, 1st Ex Sess, ch. 1, § 12; Laws, 2008, ch. 439, § 1; Laws, 2009, ch. 512, § 2; Laws, 2010, ch. 533, § 23; Laws, 2010, 2nd Ex Sess, ch. 30, § 5; Laws, 2011, ch. 453, § 3; Laws, 2012, ch. 520, § 9; Laws, 2013, ch. 462, § 1; Laws, 2013, ch. 571, § 1; Laws, 2013, 1st Ex Sess, ch. 1, § 10; Laws, 2014, ch. 429, § 1; Laws, 2014, ch. 505, § 1; Laws, 2014, ch. 528, § 2; Laws, 2015, ch. 420, § 12; Laws, 2016, 1st Ex Sess, ch. 1, § 13; Laws, 2017, ch. 413, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of ch. 464, Laws of 2003, effective from and after July 1, 2003 (approved March 23, 2003), amended this section. Section 5 of ch. 520, Laws of 2003, effective July 1, 2003 (approved April 19, 2003), also amended this section. As set out above, this section reflects the language of Section 5 of ch. 520, Laws of 2003, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 2 of ch. 469 Laws of 2004, effective from and after July 1, 2004 (approved May 1, 2004), amended this section. Section 6 of ch. 528, Laws of 2004, effective from and after July 1, 2004 (approved May 12, 2004), also amended this section. As set out above, this section reflects the language of Section 6 of ch. 528, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 4 of ch. 315 Laws of 2005, effective from and after approval March 14, 2005 (approved March 14, 2005), amended this section. Section 2 of ch. 486, Laws of 2005, effective July 1, 2005 (approved April 6, 2005), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 486, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 15 of ch. 303, Laws of 2007, effective from and after July 1, 2007 (approved March 2, 2007), amended this section. Section 1 of ch. 503, Laws of 2007, effective July 1, 2007 (approved March 30, 2007), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 503, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Section 1 of Chapter 462, Laws of 2013, effective from and after July 1, 2013 (approved March 25, 2013), amended this section. Section 1 of Chapter 571, Laws of 2013, effective from and after passage (approved April 26, 2013), also amended this section. Section 1 of Chapter 571, Laws of 2013, contained language that specifically provided that it superseded § 27-65-101 as amended by Chapter 462, Laws of 2013. Subsequently, § 27-65-101 was amended by Section 1 of Chapter 1, 1st Extraordinary Session, Laws of 2013, effective from and after passage (approved April 28, 2013). As set out above, this section reflects the language of Section 1 of Chapter 1, 1st Extraordinary Session, Laws of 2013.

Section 1 of ch. 429, Laws of 2014, effective from and after July 1, 2014 (approved March 24, 2014), amended this section. Section 1 of ch. 505, Laws of 2014, effective from and after July 1, 2014 (approved April 21, 2014), and Section 2 of ch. 528, Laws of 2014, effective from and after July 1, 2014 (approved April 23, 2014), also amended this section. As set out above, this section reflects the language of all amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Note — Paragraph (bb) of subsection (1), which exempted the sales of production items used in the production of motion pictures from the tax levied by this chapter, was repealed by its own terms, effective July 1, 2011.

Section 27-65-15" referred to in the first paragraph of (1) was repealed by Laws of 2006, ch. 458, § 1 effective from and after July 1, 2006.

Sections 27-65-101 through 27-65-111 are derived from Chapter 347, Laws of 1978. Sections 2 and 9 of said Chapter 347 read as follows:

"SECTION 2. It is the intention of the Legislature that the subsequent sections of this act be codified within Chapter 65, Mississippi Code of 1972, and that they be codified in the sequence in which they appear in this act, with no other existing Code sections interspaced between them, in order that the scheme of sales tax exemptions of this state will be more readily apparent and accessible.

Laws of 1989, ch. 524, § 36, effective January 1, 2001, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Laws of 1992, ch. 462, §§ 1 and 3, effective from and after passage (approved May 5, 1992), provide as follows:

"SECTION 1. The purpose of this act is to encourage the further development of underground natural gas storage facilities in this state by amending and clarifying the sales tax law to provide a specific exemption with respect to the gross income from such operations.

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the Mississippi sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the Mississippi sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-65-15, referred to in the first paragraph of (1), was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Sections 57-51-1 through 57-51-15, referred to in (1)(k) were repealed by Laws of 1989, ch. 524, § 32, effective from and after July 1, 1989.

Section 57-54-5, referred to in (1)(*l*), was repealed by Laws of 1989, ch. 524, § 34, effective from and after July 1, 1989.

Section 57-53-1, referred to in (1)(p), was repealed by Laws of 1989, ch. 524, § 33, effective from and after July 1, 1989.

Section 57-64-33, referred to in (1)(z), was repealed by Laws of 2004, ch. 481, § 1, effective from and after passage (approved May 1, 2004).

Laws of 2000, 2nd Ex Sess, ch. 1, § 1 effective August 30, 2000, provides:

"SECTION 1. This act may be cited as the Advantage Mississippi Initiative."

Laws of 2014, ch. 505, § 3, effective July 1, 2014, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2014, ch. 528, § 4, effective July 1, 2014, provides:

"SECTION 4. The Division of Tourism of the Mississippi Development Authority shall prepare and file a report with the Legislature regarding the impact of the tax exemption provided in Section 27-65-101(rr) on the tourism industry in this state and other economic development activities. The report shall be filed with the Clerk of the Mississippi House of Representatives and Secretary of the Mississippi State Senate not later than December 31, 2015."

Amendment Notes — The 2016 1st Extraordinary Session amendment added (1)(uu) and (vv).

The 2017 amendment added (1)(ww).

Cross References — Tax exemption for solid and hazardous waste treatment projects and related agreements, see § 17-17-131.

Department of Revenue, generally, see § 27-3-1 et seq.

Use tax exemptions, see § 27-67-7.

Exemptions from salesmen's tax, see § 27-67-507.

Emergency management powers of Governor, see § 33-15-11.

Mississippi Commission on Marine Resources, see § 49-15-301 et seq.

Mississippi Development Authority generally, see § 57-1-1 et seq.

Certain purchases made pursuant to Small Enterprise Development Finance Act exempt from taxation, see § 57-71-13.

Growth and Prosperity Act, see § 57-80-1 et seq.

Federal Aspects — US Coast Guard, see generally 14 USCS § 1 et seq.

Sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, see 26 USCS §§ 501(c)(3) and 501(c)(4).

Oil Pollution Act of 1990 generally, see 33 USCS § 2701 et seq.

JUDICIAL DECISIONS

1. In general.
2. Raw materials.
3. Semitrailers.
4. Vessels and barges.
5. Pollution control equipment.
6. [Reserved for future use.]
7. Under former § 27-65-29.

1. In general.

Legislative amendments did not impact the company as Miss. Code Ann. § 27-65-101(1)(ee) (Supp. 2014) was limited to parts sold for repair of certain out-of-state aircraft, and the company failed to show that the airplanes it repaired were engaged exclusively in business of foreign or interstate commerce. Miss. Dep't of Revenue v. Heath, 185 So. 3d 1052 (Miss. Ct. App. 2015), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 91 (Miss. Feb. 25, 2016).

Aviation company failed to prove that it was exempt from taxation under Miss. Code Ann. § 27-65-101(1)(ee) (Supp. 2014) where it was no longer subject to collection and payment of sales tax on the gross income of its business, and thus, was not entitled to the exemption for wholesale purchases. Miss. Dep't of Revenue v. Heath, 185 So. 3d 1052 (Miss. Ct. App. 2015), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 91 (Miss. Feb. 25, 2016).

2. Raw materials.

Electricity that was used by taxpayer in electrolytic process to create chemical products was not "raw material" for purpose of statute exempting from sales taxes raw materials sold to manufacturer for producing products, but not for fuel; electricity is pure energy and fuels reactions in electrolytic cells by forcing electrons in circuit and ions in solution to move. Kerr-McGee Chem. Corp. v. Buelow, 670 So. 2d 12 (Miss. 1995).

3. Semitrailers.

A taxpayer was properly to pay sales taxes on trailers sold to out-of-state residents, notwithstanding his contention that the trailers qualifed as "semitrailers" with the "48 hour drive out rule," where the taxpayer failed to establish that the trailers were exported from the state within 48 hours and that they were registered and first used in another state. Buelow v. Glidewell, 757 So. 2d 216 (Miss. 2000).

4. Vessels and barges.

The statutory exemption applied to a contract pursuant to which a bankruptcy debtor agreed to repair and convert a damaged tank barge into a replica of an 1860's side wheeler river boat to be utilized as a floating casino, notwithstanding that the debtor never owned the barge upon which the casino was built, as the term builder also contemplates the remodeling and adapting of buildings and other structures. Mississippi State Tax Comm'n v. Superior Boat Works, Inc. (In re Superior Boat Works, Inc.), 246 B.R. 259 (N.D. Miss. 2000), appeal dismissed by 268 F.3d 1063, 2001 U.S. App. LEXIS 17540 (5th Cir. Miss. 2001).

5. Pollution control equipment.

Chancery court properly granted summary judgment to a power company, determined that a sales and use-tax exemption for "pollution control equipment" complied with the statutory exemption, concluded that the corresponding regulation was invalid where it conflicted with the plain statutory language, and ordered a reimbursement because the use taxes were absorbed in the approved rates, the burners were purchased to comply with federal regulations, and qualified for the statutory tax exemption. Miss. Dep't of Revenue v. Miss. Power Co., 144 So. 3d 155 (Miss. 2014).

6. [Reserved for future use.]

7. Under former § 27-65-29.

An asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption, and the language of this section [Code 1942, § 10116] must be construed most favorably to the taxing power, with the claimant having the burden of showing clearly his right to the exemption. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

The gross income of the business or the gross proceeds of the sales upon which to compute the privilege tax upon a manufacturer, such as a lumber company, remains the same whether computed from sales in interstate commerce, sales of products exempt from sales tax, popularly so-called, or sales to the United States government, even though the gross income derived from such sales may be exempt from a tax thereon as sales. Stone v. Green Lumber Co., 191 Miss. 414, 1 So. 2d 764 (1941).

RESEARCH REFERENCES

ALR. Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 A.L.R.2d 465.

Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 A.L.R.3d 292.

What constitutes direct use within meaning of statute exempting from sales and use taxes equipment directly used in production of tangible personal property. 3 A.L.R.4th 1129.

Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes. 4 A.L.R.4th 581.

Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 130 et seq.

CJS. 15 C.J.S., Commerce §§ 111-117, 125-128.

§ 27-65-103. Exemptions; agricultural.

The exemptions from the provisions of this chapter which are of an agricultural nature or which are more properly classified as agricultural exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitution of the United States or the State of Mississippi. No agricultural exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent agricultural exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) The gross proceeds of sales of lint cotton, seed cotton, baled cotton, whether compressed or not, and cottonseed and soybeans in their original condition. Retail sales of seeds, livestock feed, poultry feed, fish feed and fertilizers. Sales of defoliants, insecticides, fungicides, herbicides and baby chicks used in growing agricultural products for market. Bagging and ties for baling cotton, hay-baling wire and twine, boxes, bags and cans used in growing or preparing agricultural products for market when possession thereof will pass to the customer at the time of sale of the product contained therein. Sales of ice to commercial fishermen purchased for use in the preservation of seafood or to producers for use in the refrigeration of vegetables for market.

(b) The sales by producers of livestock, poultry, fish, honey bees or other products of farm, grove, apiary or garden when such products are sold in the original state or condition of preparation for sale before such products are subjected to any other process within a class of business or sold by a producer through an established store, as defined in the Privilege Tax Law. However, except as otherwise provided in this paragraph (b), this exemption shall not apply to ornamental plants which bear no fruit of commercial value. The exemption provided in this paragraph (b) shall apply to Christmas trees, hay, straw, fresh cut flowers and similar products when (i) grown in Mississippi and (ii) cut, severed or otherwise removed from the farm, grove, garden or other place of production and first sold from such place of production in the original state or condition of preparation for sale. All sales by agricultural cooperative associations organized under Article 9, Chapter 7, Title 69, or under Chapter 17 or 19, Title 79, Mississippi Code of 1972, of agricultural products produced by members for market before such products are subjected to any manufacturing process.

(c) The gross proceeds of retail sales of mules, horses, honey bees and other livestock.

(d) Income from grading, excavating, ditching, dredging or landscaping activities performed for a farmer on a farm for agricultural or soil erosion purposes.

(e) The gross proceeds of sales of all antibiotics, hormones and hormone preparations, drugs, medicines and other medications including serums and vaccines, vitamins, minerals or other nutrients for use in the production and growing of fish, livestock, honey bees and poultry by whomever sold. Such exemption shall be in addition to the exemption provided in this section for feed for fish, livestock, honey bees and poultry.

(f) Sales of food products and honey that are grown, made or processed in Mississippi and sold from farmers' markets that have been certified by the Mississippi Department of Agriculture and Commerce.

SOURCES: Laws, 1978, ch. 347, § 4; Laws, 1987, ch. 454, § 2; Laws, 1992, ch. 466, § 1; Laws, 1998, ch. 446, § 1; Laws, 2010, ch. 474, § 1; Laws, 2013, ch. 498, § 1; Laws, 2016, ch. 440, § 1, eff from and after July 1, 2016.

Editor's Note — Section 27-65-15, referred to in the second paragraph, was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Laws of 2016, ch. 440, § 2, effective July 1, 2016, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment, in (b), inserted the exception near the beginning of the second sentence and added the third sentence.

Cross References — Legislative intent in regard to the codification of sections of Chapter 347, Laws of 1978, and as to effect of said chapter on actions taken pursuant to prior law, see the Editor's Note to § 27-65-101.

Use tax exemptions, see § 27-67-7.

Exemptions from salesmen's tax, see § 27-67-507.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 27-65-29.

1.-5. [Reserved for future use.]

6. Under former § 27-65-29.

An asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption, and the language of this section [Code 1942, § 10116] must be construed most favorably to the taxing power, with the claimant having the burden of showing clearly his right to the exemption. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

Statute [Code 1942, § 10116] exempting from taxation sales of boxes and crates used in preparing agricultural products for market held not to exempt manufacturer of such boxes and crates from payment of manufacturer's tax, since it was not tax on sales. Southern Package Corp. v. State Tax Comm'n, 174 Miss. 212, 164 So. 45 (1935).

Corporations engaged in ginning cotton could not claim exemption from two per cent tax on income from tolls on ground that their business was sale of farm products in original state by producers' organization. Frazier v. Stone, 171 Miss. 56, 156 So. 596 (1934).

RESEARCH REFERENCES

ALR. Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 A.L.R.2d 465.

Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 A.L.R.3d 292.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes § 140.

CJS. 15 C.J.S., Commerce §§ 111-117, 125-128.

§ 27-65-105. Exemptions; governmental.

The exemption from the provisions of this chapter which are of a governmental nature or which are more properly classified as governmental exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No governmental exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent governmental exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972, except as provided by paragraph (f) of this section.

The tax levied by this chapter shall not apply to the following:

(a) Sales of property, labor, services or products taxable under Sections 27-65-17, 27-65-19, 27-65-23 and 27-19-26, when sold to and billed directly to and payment therefor is made directly by the United States government, the State of Mississippi and its departments, institutions, counties and municipalities or departments or school districts of said counties and municipalities.

The exemption from the tax imposed under this chapter shall not apply to sales of tangible personal property or specified digital products, labor or services to contractors purchasing in the performance of contracts with the United States, the State of Mississippi, counties and municipalities.

(b) Sales to schools, when such schools are supported wholly or in part by funds provided by the State of Mississippi, provided that this exemption does not apply to sales of property which is not to be used in the ordinary operation of the school, or which is to be resold to the students or the public.

(c) Amounts received from the sale of school textbooks to students.

(d) Sales to the Mississippi Band of Choctaw Indians, but not to Indians individually.

(e) Sales of firefighting equipment to governmental fire departments or volunteer fire departments for their use.

(f) Sales of any gas from any project, as defined in the Municipal Gas Authority of Mississippi Law, to any municipality shall not be subject to sales, use or other tax.

(g) Sales of home medical equipment and home medical supplies listed as eligible for payment under Title XVIII of the Social Security Act or under the state plan for medical assistance under Title XIX of the Social Security Act, prosthetics, orthotics, hearing aids, hearing devices, prescription eyeglasses, oxygen and oxygen equipment, when ordered or prescribed by a licensed physician for medical purposes of a patient, and when payment for such equipment or supplies, or both, is made, in part or in whole, under the provisions of the Medicare or Medicaid program, then the entire sale shall be exempt from the taxes imposed by this chapter. Payment does not have to be made in whole or in part by any particular person to be eligible for this exemption. Purchases of home medical equipment and supplies by a provider of home health services or a provider of hospice services are eligible for this exemption if the purchases otherwise meet the requirements of this paragraph.

(h) Sales to regional educational service agencies established under Section 37-7-345.

(i) Sales of buses and other motor vehicles, and parts and labor used to maintain and/or repair such buses and motor vehicles, to an entity that (a) has entered into a contract with a school board under Section 37-41-31 for the purpose of transporting students to and from schools and (b) uses or will use the buses and other motor vehicles for such transportation purposes. This paragraph (i) shall apply to contracts entered into or renewed on or after July 1, 2010.

(j) Parking at events held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds for the grant program authorized under Section 18, Chapter 530, Laws of 1995.

(k) Sales of tangible personal property, labor, services or products to schools and school districts under a program that is administered by or coordinated with an agency, commission, department or other instrumentality of the United States government when payment for the tangible personal property, labor, services or products is made by or through a nonprofit organization or other entity established by or for the benefit of the agency, commission, department or other instrumentality of the United States government administering or coordinating such program.

SOURCES: Laws, 1978, ch. 347, § 5; Laws, 1979, chs. 355, 461, § 1; Laws, 1988, ch. 515, § 37; Laws, 1999, ch. 462, § 1; Laws, 2005, ch. 540, § 10; Laws, 2009, ch. 332, § 6; Laws, 2009, ch. 457, § 1; Laws, 2010, ch. 502, § 4; Laws, 2014, ch. 528, § 3; Laws, 2016, ch. 484, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 6 of ch. 332, Laws of 2009, effective from and after July 1, 2009 (approved March 12, 2009), amended this section. Section 1 of ch. 457, Laws of 2009, effective from and after July 1, 2009 (approved March 26, 2009), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Editor's Note — Section 27-65-15, referred to in the second paragraph, was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Laws of 2009, ch. 457, § 2, effective July 1, 2009, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment added the last two sentences of (g); and added (k).

Cross References — Fire departments, generally, see § 21-25-1 et seq.

"Specified digital products" defined, see § 27-65-26.

Legislative intent in regard to the codification of sections of Chapter 347, Laws of 1978, and as to effect of said chapter on actions taken pursuant to prior law, see the Editor's Note to § 27-65-101.

Tribal tax by Mississippi Band of Choctaw Indians, see §§ 27-65-211 through 27-65-221.

Use tax exemptions, see § 27-67-7.

Exemptions from salesmen's tax, see § 27-67-507.

Provisions of the Municipal Gas Authority of Mississippi Law, see § 77-6-1 et seq.

Federal Aspects — Title XVIII of the Social Security Act, see 42 USCS § 1395 et seq.

Title XIX of the Social Security Act, see 42 USCS § 1396 et seq.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 27-65-29.

1.-5. [Reserved for future use.]

6. Under former § 27-65-29.

An asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption, and the language of this section [Code 1942, § 10116] must be construed most favorably to the taxing power, with the claimant having the burden of showing clearly his right to the exemption. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

Under statute levying a tax on the gross income from business of operating a hotel and also statute [Code 1942, § 10113] exempting from the general sales tax so much of the gross income as it derived from sales of tangible property to the United States Government and so much thereof as it derived from charges for labor to the United States government, the furnishing of lodging in a hotel to the United States government is neither sale of tangible property nor a charge for labor. Edwards House Co. v. Stone, 216 Miss. 96, 61 So. 2d 663 (1952).

A hotel operator, who contracted with the United States government to supply lodging to army and air force recruits and agreed that the government would not be expected to pay the sales tax of such lodgings, was himself liable for the sales tax upon the lodgings so furnished. Edwards House Co. v. Stone, 216 Miss. 96, 61 So. 2d 663 (1952).

An amount received from a federal agency for services rendered in compressing cotton was subject to the privilege tax hereunder [Code 1942, § 10113], such amount not being income from a sale to the government within the exception therein provided. Compress of Union v. Stone, 188 Miss. 49, 193 So. 329 (1940), cert. denied, 311 U.S. 668, 61 S. Ct. 27, 85 L. Ed. 429 (1940), overruled on other grounds, Hollingsworth v. Bovaird Supply Co., 465 So. 2d 311 (Miss. 1985).

The imposition of a privilege tax on an amount received from a federal agency for services rendered in compressing cotton was not violative of the federal constitution as being a tax on one of the federal governmental agencies, since the tax was not imposed on a federal governmental agency but on income derived from such an agency. Compress of Union v. Stone, 188 Miss. 49, 193 So. 329 (1940), cert. denied, 311 U.S. 668, 61 S. Ct. 27, 85 L. Ed. 429 (1940), overruled on other grounds, Hollingsworth v. Bovaird Supply Co., 465 So. 2d 311 (Miss. 1985).

ATTORNEY GENERAL OPINIONS

Although certain items acquired through the Medicaid program are billed directly to and payment therefor is made directly by the Medicaid program, the items are actually sold to the patient or customer; thus, the items become the patient's or customer's property and are not exempt from sales tax. Wetherbee, May 13, 1992, A.G. Op. #92-0334.

Section 27-65-105(e) has exempted governmental fire departments and volunteer fire departments from paying state sales tax when they purchase fire fighting equipment; State Tax Commission does not issue certificate for this type of exemption. Switzer Sept. 21, 1993, A.G. Op. #93-0716.

Under Section 27-65-105(e)(that volunteer fire fighting organization is exempt from payment of state sales tax when it purchases fire fighting equipment; exemption from payment of state sales tax would only apply in purchase of fire fighting equipment, not purchase of items that are not used as fire fighting equipment. Switzer Sept. 21, 1993, A.G. Op. #93-0716.

A non-profit Mississippi corporation organized and existing for the purpose of providing public ambulance service is not entitled to the exemption from sales tax provided by the statute. Oliver, April 10, 1998, A.G. Op. #98-0183.

Mississippi State University is not a school within the meaning of subsection (b), is exempt from sales tax pursuant to subsection (a), and, therefore, is not required to pay sales tax on the purchase of yearbooks from a printer. Guest, May 12, 2000, A.G. Op. #2000-0257.

The statute provides an exemption from sales tax to the farmer who picks, shells, cools, bags, and subsequently sells his raw and unprocessed product. Spell, Jr., July 26, 2002, A.G. Op. #02-0405.

Even though amounts representing the 3½ percent contractor's tax could have been included in a contractor's bid and in the original contract amounts, and paid by a city when the work was performed, the city is not authorized to pay additional sums to the contractor after the work has been performed and payment obligations under the contracts have been met or in instances in which the claims are barred by the applicable statute of limitations. Odom, Apr. 21, 2006, A.G. Op. 06-0128.

RESEARCH REFERENCES

ALR. Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 A.L.R.2d 465.

Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 A.L.R.3d 292.

Exemption of charitable or educational organization from sales or use tax. 69 A.L.R.5th 477.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 150, 151.

CJS. 15 C.J.S., Commerce §§ 111-117, 125-128.

§ 27-65-107. Exemptions; utility.

The exemptions from the provisions of this chapter which relate to utilities or which are more properly classified as utility exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No utility exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent utility exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales and rentals of locomotives, rail rolling stock and materials for their repair, locomotive water, when made to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission.

(b) Rentals of manufacturing machinery to a manufacturer or custom processor where such manufacturer or custom processor is engaged in, and such machinery is used in, the manufacture of containers made from timber or wood for sale. The tax, likewise, shall not apply to replacement or repair parts of such machinery used in such manufacture.

(c) Sales of tangible personal property and services to nonprofit water associations or corporations in which no part of the net earnings inures to the benefit of any private shareholder, group or individual. Only sales of property or services which are ordinary and necessary to the operation of such organizations are exempt from tax.

(d) Wholesale sales of tangible personal property for resale under Section 27-65-19.

(e) From and after July 1, 2003, sales of fuel used to produce electric power by a company primarily engaged in the business of producing, generating or distributing electric power for sale.

(f) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a manufacturer, custom processor, technology intensive enterprise meeting the criteria provided for in Section 27-65-17(1)(f), or public service company for industrial purposes, which shall include that used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressor or pumping stations, or to operate railroad locomotives.

(g) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a producer or processor for use directly in the production of poultry or poultry products, the production of livestock and livestock products, the production of domesticated fish and domesticated fish products, the production of marine aquaculture products, the production of plants or food by commercial horticulturists, the processing of milk and milk products, the processing of poultry and livestock feed, and the irrigation of farm crops.

(h) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a commercial fisherman, shrimper or oysterman.

(i) Sales exempt under the Facilitating Business Rapid Response to State Declared Disasters Act of 2015 (Sections 27-113-1 through 27-113-9).

(j) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a permanent enterprise that is eligible for the exemption authorized in Section 27-65-101(1)(ww) upon completion of the expansion upon which such exemption is based; however, in order to be eligible for the exemption authorized by this paragraph, the expansion must:

(i) Create at least eighty-five (85) full-time jobs in this state with an average annual wage of at least Sixty Thousand Dollars ($60,000.00); and

(ii) Have at least Eighty Million Dollars ($80,000,000.00) in new investment at the existing facility.

SOURCES: Laws, 1978, ch. 347, § 6; Laws, 1979, ch. 302, § 8; Laws, 1988, ch. 515, § 38; Laws, 1995, ch. 508, § 5; Laws, 1997, ch. 536, § 3; Laws, 2013, ch. 537, § 1; Laws, 2015, ch. 420, § 13; Laws, 2017, ch. 413, § 3, eff from and after July 1, 2017.

Editor's Note — Section 27-65-15, referred to in the second paragraph, was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Laws of 2013, ch. 537, § 6, as amended by Laws of 2014, ch. 530, § 41, effective July 1, 2014, provides:

"SECTION 6. (1) Except as otherwise provided in subsection (2) of this section, nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"(2) The exemptions authorized in Section 1 of this act shall apply to all sales billed by the provider from and after July 1, 2014."

Amendment Notes — The 2017 amendment added (j).

Cross References — Use tax exemptions, see § 27-67-7.

Exemptions from salesmen's tax, see § 27-67-507.

Provisions of the Municipal Gas Authority of Mississippi Law see § 77-6-1 et seq.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 27-65-29.

1. In general.

Gas company's use of its own gas for its operations was subject to the use tax and not exempt under Miss. Code Ann. § 27-67-7 because the gas used at the company's plant was never sold at wholesale for resale by another company, but instead the company treated the transaction as a sale to itself and used the gas to fuel its own operations; thus, the company could not avail itself of the wholesaler exemption. Pursue Energy Corp. v. Miss. State Tax Comm'n, 968 So. 2d 368 (Miss. 2007).

2.-5. [Reserved for future use.]

6. Under former § 27-65-29.

An asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption, and the language of this section [Code 1942, § 10116] must be construed most favorably to the taxing power, with the claimant having the burden of showing clearly his right to the exemption. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

Telephone company held not liable for privilege tax measured by gross receipts from service charges, in respect of bills by governmental agencies to which tax was not added as a separate charge, where treated for rate-making purposes as an operating expense. Monaghan v. Southern Bell Tel. & Tel. Co., 242 Miss. 611, 136 So. 2d 198 (1962).

ATTORNEY GENERAL OPINIONS

Pursuant to Section 27-65-107(c), the sale of property or services to the water association is exempt from sales tax, but the water sold by the water association is not exempt from sales tax. Jones, October 4, 1996, A.G. Op. #96-0502.

RESEARCH REFERENCES

ALR. Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 A.L.R.2d 465.

Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 A.L.R.3d 292.

Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes. 15 A.L.R.4th 269.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes § 152.

CJS. 15 C.J.S., Commerce §§ 111-117, 125-128.

§ 27-65-109. Exemptions; taxes.

The exemptions from the provisions of this chapter which relate to taxes or which are more properly classified as tax exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the constitutions of the United States or the State of Mississippi. No tax exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent tax exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Federal retailers excise taxes, federal tax levied on income from transportation, telegraphic dispatches, telephone conversations and electric energy.

(b) The State of Mississippi gasoline tax on gasoline sold by a distributor for nonhighway use which is refunded by the motor vehicle comptroller.

SOURCES: Laws, 1978, ch. 347, § 7, eff from and after July 1, 1978.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph by substituting "Section 27-65-15 or 27-65-21" for "Sections 27-65-15 or 27-65-21." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Note — Section 27-65-15, referred to in the second paragraph, was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Cross References — Legislative intent in regard to the codification of sections of Chapter 347, Laws 1978, and as to the effect of said chapter on actions taken pursuant to prior law, see the Editor's Note to § 27-65-101.

Use tax exemptions, see § 27-67-7.

Exemptions from salesmen's tax, see § 27-67-507.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 27-65-29.

1.-5. [Reserved for future use.]

6. Under former § 27-65-29.

An asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption, and the language of this section [Code 1942, § 10116] must be construed most favorably to the taxing power, with the claimant having the burden of showing clearly his right to the exemption. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

RESEARCH REFERENCES

ALR. Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 A.L.R.2d 465.

Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 A.L.R.3d 292.

Cable television equipment or services as subject to sales or use tax. 5 A.L.R.4th 754.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 110 et seq.

CJS. 15 C.J.S., Commerce §§ 111-117, 125-128.

§ 27-65-111. Exemptions; others.

The exemptions from the provisions of this chapter which are not industrial, agricultural or governmental, or which do not relate to utilities or taxes, or which are not properly classified as one (1) of the exemption classifications of this chapter, shall be confined to persons or property exempted by this section or by the Constitution of the United States or the State of Mississippi. No exemptions as now provided by any other section, except the classified exemption sections of this chapter set forth herein, shall be valid as against the tax herein levied. Any subsequent exemption from the tax levied hereunder, except as indicated above, shall be provided by amendments to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales of tangible personal property and services to hospitals or infirmaries owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are subject to and governed by Sections 41-7-123 through 41-7-127.

Only sales of tangible personal property or services which are ordinary and necessary to the operation of such hospitals and infirmaries are exempted from tax.

(b) Sales of daily or weekly newspapers, and periodicals or publications of scientific, literary or educational organizations exempt from federal income taxation under Section 501(c) (3) of the Internal Revenue Code of 1954, as it exists as of March 31, 1975, and subscription sales of all magazines.

(c) Sales of coffins, caskets and other materials used in the preparation of human bodies for burial.

(d) Sales of tangible personal property for immediate export to a foreign country.

(e) Sales of tangible personal property to an orphanage, old men's or ladies' home, supported wholly or in part by a religious denomination, fraternal nonprofit organization or other nonprofit organization.

(f) Sales of tangible personal property, labor or services taxable under Sections 27-65-17, 27-65-19 and 27-65-23, to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual.

(g) Sales to elementary and secondary grade schools, junior and senior colleges owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are exempt from state income taxation, provided that this exemption does not apply to sales of property or services which are not to be used in the ordinary operation of the school, or which are to be resold to the students or the public.

(h) The gross proceeds of retail sales and the use or consumption in this state of drugs and medicines:

(i) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed or prescription filled by a registered pharmacist in accordance with law; or

(ii) Furnished by a licensed physician, surgeon, dentist or podiatrist to his own patient for treatment of the patient; or

(iii) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, dentist or podiatrist; or

(iv) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being; or

(v) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

"Medicines," as used in this paragraph (h), shall mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use; provided that "medicines" do not include any auditory, prosthetic, ophthalmic or ocular device or appliance, any dentures or parts thereof or any artificial limbs or their replacement parts, articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof, or any alcoholic beverage or any other drug or medicine not commonly referred to as a prescription drug.

Notwithstanding the preceding sentence of this paragraph (h), "medicines" as used in this paragraph (h), shall mean and include sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve in the body.

"Hospital," as used in this paragraph (h), shall have the meaning ascribed to it in Section 41-9-3, Mississippi Code of 1972.

Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this paragraph (h).

(i) Retail sales of automobiles, trucks and truck-tractors if exported from this state within forty-eight (48) hours and registered and first used in another state.

(j) Sales of tangible personal property or services to the Salvation Army and the Muscular Dystrophy Association, Inc.

(k) From July 1, 1985, through December 31, 1992, retail sales of "alcohol blended fuel" as such term is defined in Section 75-55-5. The gasoline-alcohol blend or the straight alcohol eligible for this exemption shall not contain alcohol distilled outside the State of Mississippi.

(*l*) Sales of tangible personal property or services to the Institute for Technology Development.

(m) The gross proceeds of retail sales of food and drink for human consumption made through vending machines serviced by full line vendors from and not connected with other taxable businesses.

(n) The gross proceeds of sales of motor fuel.

(o) Retail sales of food for human consumption purchased with food stamps issued by the United States Department of Agriculture, or other federal agency, from and after October 1, 1987, or from and after the expiration of any waiver granted pursuant to federal law, the effect of which waiver is to permit the collection by the state of tax on such retail sales of food for human consumption purchased with food stamps.

(p) Sales of cookies for human consumption by the Girl Scouts of America no part of the net earnings from which sales inures to the benefit of any private group or individual.

(q) Gifts or sales of tangible personal property or services to public or private nonprofit museums of art.

(r) Sales of tangible personal property or services to alumni associations of state-supported colleges or universities.

(s) Sales of tangible personal property or services to National Association of Junior Auxiliaries, Inc., and chapters of the National Association of Junior Auxiliaries, Inc.

(t) Sales of tangible personal property or services to domestic violence shelters which qualify for state funding under Sections 93-21-101 through 93-21-113.

(u) Sales of tangible personal property or services to the National Multiple Sclerosis Society, Mississippi Chapter.

(v) Retail sales of food for human consumption purchased with food instruments issued the Mississippi Band of Choctaw Indians under the Women, Infants and Children Program (WIC) funded by the United States Department of Agriculture.

(w) Sales of tangible personal property or services to a private company, as defined in Section 57-61-5, which is making such purchases with proceeds of bonds issued under Section 57-61-1 et seq., the Mississippi Business Investment Act.

(x) The gross collections from the operation of self-service, coin-operated car washing equipment and sales of the service of washing motor vehicles with portable high-pressure washing equipment on the premises of the customer.

(y) Sales of tangible personal property or services to the Mississippi Technology Alliance.

(z) Sales of tangible personal property to nonprofit organizations that provide foster care, adoption services and temporary housing for unwed mothers and their children if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(aa) Sales of tangible personal property to nonprofit organizations that provide residential rehabilitation for persons with alcohol and drug dependencies if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(bb) Retail sales of an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than One Hundred Dollars ($100.00) and the sale takes place during a period beginning at 12:01 a.m. on the last Friday in July and ending at 12:00 midnight the following Saturday. This paragraph (bb) shall not apply to:

(i) Accessories including jewelry, handbags, luggage, umbrellas, wallets, watches, backpacks, briefcases, garment bags and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(ii) The rental of clothing or footwear; and

(iii) Skis, swim fins, roller blades, skates and similar items worn on the foot.

From and after January 1, 2010, the governing authorities of a municipality, for retail sales occurring within the corporate limits of the municipality, may suspend the application of the exemption provided for in this paragraph (bb) by adoption of a resolution to that effect stating the date upon which the suspension shall take effect. A certified copy of the resolution shall be furnished to the Department of Revenue at least ninety (90) days prior to the date upon which the municipality desires such suspension to take effect.

(cc) The gross proceeds of sales of tangible personal property made for the sole purpose of raising funds for a school or an organization affiliated with a school.

As used in this paragraph (cc), “school” means any public or private school that teaches courses of instruction to students in any grade from Kindergarten through Grade 12.

(dd) Sales of durable medical equipment and home medical supplies when ordered or prescribed by a licensed physician for medical purposes of a patient. As used in this paragraph (dd), “durable medical equipment” and “home medical supplies” mean equipment, including repair and replacement parts for the equipment or supplies listed under Title XVIII of the Social Security Act or under the state plan for medical assistance under Title XIX of the Social Security Act, prosthetics, orthotics, hearing aids, hearing devices, prescription eyeglasses, oxygen and oxygen equipment. Payment does not have to be made in whole or in part by any particular person to be eligible for this exemption. Purchases of home medical equipment and supplies by a provider of home health services or a provider of hospice services are eligible for this exemption if the purchases otherwise meet the requirements of this paragraph.

(ee) Sales of tangible personal property or services to Mississippi Blood Services.

(ff)(i) Subject to the provisions of this paragraph (ff), retail sales of firearms, ammunition and hunting supplies if sold during the annual Mississippi Second Amendment Weekend holiday beginning at 12:01 a.m. on the last Friday in August and ending at 12:00 midnight the following Sunday. For the purposes of this paragraph (ff), "hunting supplies" means tangible personal property used for hunting, including, and limited to, archery equipment, firearm and archery cases, firearm and archery accessories, hearing protection, holsters, belts and slings. Hunting supplies does not include animals used for hunting.

(ii) This paragraph (ff) shall apply only if one or more of the following occur:

1. Title to and/or possession of an eligible item is transferred from a seller to a purchaser; and/or

2. A purchaser orders and pays for an eligible item and the seller accepts the order for immediate shipment, even if delivery is made after the time period provided in subparagraph (i) of this paragraph (ff), provided that the purchaser has not requested or caused the delay in shipment.

(gg) Sales of nonperishable food items to charitable organizations that are exempt from federal income taxation under Section 501(c) (3) of the Internal Revenue Code and operate a food bank or food pantry or food lines.

(hh) Sales of tangible personal property or services to The United Way of the Pine Belt Region, Inc.

(ii) Sales of tangible personal property or services to the Mississippi Children's Museum or any subsidiary or affiliate thereof operating a satellite or branch museum within this state.

(jj) Sales of tangible personal property or services to the Jackson Zoological Park.

(kk) Sales of tangible personal property or services to the Hattiesburg Zoo.

(*ll*) Gross proceeds from sales of food, merchandise or other concessions at an event held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds for the grant program authorized under Section 18, Chapter 530, Laws of 1995.

(mm) Sales of tangible personal property and services to the Diabetes Foundation of Mississippi and the Mississippi Chapter of the Juvenile Diabetes Research Foundation.

(nn) Sales of potting soil, mulch, or other soil amendments used in growing ornamental plants which bear no fruit of commercial value when sold to commercial plant nurseries that operate exclusively at wholesale and where no retail sales can be made.

(oo) Sales of tangible personal property or services to the University of Mississippi Medical Center Research Development Foundation.

(pp) Sales of tangible personal property or services to Keep Mississippi Beautiful, Inc., and all affiliates of Keep Mississippi Beautiful, Inc.

(qq) Sales of tangible personal property or services to the Friends of Children's Hospital.

(rr) Sales of tangible personal property or services to the Pinecrest Weekend Snackpacks for Kids located in Corinth, Mississippi.

(ss) Sales of hearing aids when ordered or prescribed by a licensed physician, audiologist or hearing aid specialist for the medical purposes of a patient.

(tt) Sales exempt under the Facilitating Business Rapid Response to State Declared Disasters Act of 2015 (Sections 27-113-1 through 27-113-9).

SOURCES: Laws, 1978, ch. 347, § 8; Laws, 1979, ch. 302, § 9; Laws, 1980, ch. 536, § 1; Laws, 1984, ch. 452, § 1; Laws, 1985, ch. 439; Laws, 1985, ch. 516, § 4; Laws, 1987, ch. 322, § 27; Laws, 1987, ch. 454, § 3; Laws, 1993, ch. 548, § 13; Laws, 1995, ch. 542, § 1; Laws, 2004, ch. 494, § 2; Laws, 2006, ch. 536, § 1; Laws, 2009, ch. 480, § 1; Laws, 2013, ch. 498, § 2; Laws, 2014, ch. 475, § 1; Laws, 2014, ch. 529, § 2; Laws, 2014, ch. 530, § 43; Laws, 2015, ch. 420, § 14; Laws, 2015, ch. 439, § 1; Laws, 2016, ch. 485, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 1 of Chapter 475, Laws of 2014, effective from and after July 1, 2014 (approved April 2, 2014), amended this section. Section 2 of Chapter 529, Laws of 2014, effective from and after July 1, 2014 (approved April 23, 2014), and Section 43 of Chapter 530, Laws of 2014, effective from and after July 1, 2014 (approved April 24, 2014), also amended this section. As set out above, this section reflects the language of Section 43 of Chapter 530, Laws of 2014, which contains language that specifically provides that it supersedes § 27-65-111 as amended by Chapter 475, Laws of 2014 and by Chapter 529, Laws of 2014.

Section 14 of ch. 420, Laws of 2015, effective upon passage (approved March 29, 2015), amended this section. Section 1 of ch. 439, Laws of 2015, effective from and after July 1, 2015 (approved April 13, 2015), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 17, 2015, meeting of the Committee.

Editor's Note — Section 27-65-15, referred to in the second paragraph, was repealed by Laws of 2006, ch. 458, § 1, effective from and after July 1, 2006.

Sections 41-7-123 through 41-7-127 referred to in (a) were repealed by Laws of 1979, ch. 451, § 26, effective from and after July 1, 1979.

Laws of 2014, ch. 529, § 1, effective July 1, 2014, provides:

"SECTION 1. This act shall be known and may be cited as the 'Jessica Sibley Upshaw Food Bank and Food Pantry Sales Tax Relief Act.'"

Laws of 2014, ch. 530, § 47, provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage [approved April 24, 2014], and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2016 amendment rewrote (dd), which read: "Sales of durable medical equipment and home medical supplies when ordered or prescribed by a licensed physician for medical purposes of a patient. As used in this paragraph (dd), 'durable medical equipment' means equipment, including repair and replacement parts for the equipment, which: (i) Can withstand repeated use; (ii) Is primarily and customarily used to serve a medical purpose; (iii) Generally is not useful to a person in the absence of illness or injury; and (iv) Is not worn in or on the body"; substituted "last Friday in August" for "first Friday in September" in (ff)(i); and added "or any subsidiary…within this state" at the end of (ii).

Cross References — Legislative intent in regard to the codification of sections of Chapter 347, Laws 1978, and as to the effect of said chapter on actions taken pursuant to prior law, see the Editor's Note to § 27-65-101.

Tax upon sale or use of motor vehicles, see § 27-65-201.

Tribal tax by Mississippi Band of Choctaw Indians, see §§ 27-65-211 through 27-65-221.

Use tax exemptions, see § 27-67-7.

Exemptions from salesmen's tax, see § 27-67-507.

Purchase of tangible personal property or services by private company with proceeds of bonds issued under Mississippi Business Investment Act exempt from sales tax, see § 57-61-14.

Federal Aspects — Provisions of Section 501(c)(3) of the Internal Revenue Code of 1954, see 26 USCS § 501(c)(3).

Organizations exempt from federal income taxation, see 26 USCS § 501.

Exempt organizations, see RIA Tax Coordinator 2d, ¶ D-5400 et seq.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 27-65-29.

1. In general.

An enteral feeding system sold to nursing homes did not fall within the definition of "medicines" specifically exempted from sales tax by § 27-65-111(h). Mississippi State Tax Comm'n v. Medical Devices, Inc., 624 So. 2d 987, 30 A.L.R.5th 802 (Miss. 1993).

2.-5. [Reserved for future use.]

6. Under former § 27-65-29.

An incorporated construction company, the directors of which were all members of the Mississippi Band of Choctaw Indians, was not entitled to the exemption from the sales tax provided to the Band by this section [Code 1972, § 27-65-29]. United States v. State Tax Comm'n, 535 F.2d 300 (5th Cir. 1976).

An asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption, and the language of this section [Code 1942, § 10116] must be construed most favorably to the taxing power, with the claimant having the burden of showing clearly his right to the exemption. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

Seismographic exploratory vessels specially constructed for the sole purpose of doing geophysical work, which could be used for no other purpose without extensive overhauling, were not engaged in the interstate transportation business within the exemption under the statute imposing a sales tax, and the sales of petroleum products to such vessels were subject to sales tax. Fuel Servs., Inc. v. Rhoden, 245 So. 2d 600 (Miss. 1971).

Section 514 of the Soldiers' and Sailors' Civil Relief Act does not exempt servicemen from sales and use taxes imposed by states in which they are stationed, but of which they are neither residents nor domiciliaries. Sullivan v. United States, 395 U.S. 169, 89 S. Ct. 1648, 23 L. Ed. 2d 182 (1969).

RESEARCH REFERENCES

ALR. Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes. 1 A.L.R.2d 465.

Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 A.L.R.3d 292.

Exemption of religious organization from sales or use tax. 54 A.L.R.3d 1204.

Cable television equipment or services as subject to sales or use tax. 5 A.L.R.4th 754.

Eyeglasses or other optical accessories as subject to sales or use tax. 14 A.L.R.4th 1370.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption. 25 A.L.R.4th 750.

Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

Exemption of charitable or educational organization from sales or use tax. 69 A.L.R.5th 477.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 110 et seq.

28 Am. Jur. Proof of Facts 3d 87, Proof of Unsuitable and Unauthorized Trading by Securities Brokers.

CJS. 15 C.J.S., Commerce §§ 111-117, 125-128.

Lawyers' Edition. Tax legislation as violating Federal Constitution's First Amendment — Supreme Court cases. 103 L. Ed. 2d 951.

TAX ON SALE OF MOTOR VEHICLE BY INDIVIDUAL

Sec.
27-65-201. Tax upon sale or use of motor vehicles.

§ 27-65-201. Tax upon sale or use of motor vehicles.

(1) For the purposes of this section, unless the context otherwise requires, the term "motor vehicle" means a motor vehicle required to be registered or licensed by the county tax collectors pursuant to Section 27-19-43.

(2) Upon every person, firm or corporation purchasing other than at wholesale within this state any motor vehicle required to be registered or licensed with the tax collector of any county in this state from any person, firm or corporation which is not a licensed dealer engaged in selling motor vehicles, there shall be levied and collected a sales tax at the rate of five percent (5%) of the true value of the motor vehicle as calculated by using the most current official motor vehicle assessment schedule supplied by the State Tax Commission.

(3) Upon every person, firm or corporation purchasing other than at wholesale outside the state any motor vehicle required to be registered or licensed with the tax collector of any county in this state from any person, firm or corporation which is not a licensed dealer engaged in selling motor vehicles, for use, storage or other consumption within this state there is levied a use tax at the rate of five percent (5%) of the true value of the motor vehicle as calculated by using the most current official motor vehicle assessment schedule supplied by the State Tax Commission.

(4) Where any motor vehicle is taken in trade as a credit or part payment on the sale of a motor vehicle taxable under this section, the tax levied by this section shall be paid on the net difference, that is, the true value of the motor vehicle sold less the credit for the motor vehicle taken in trade.

(5) The tax levied by this section shall be collected by the tax collector at the time of, and as a prerequisite to, the registration of or licensing of any such motor vehicle. The tax collector shall give to the person registering the vehicle a receipt in a form prescribed and furnished by the State Tax Commission for the amount of tax collected.

(6) County tax collectors shall be liable for the tax they are required to collect, and taxes which are in fact collected, under this section and failure to properly collect or maintain proper records shall not relieve them of liability for payment to the State Tax Commission. Deficiencies in collection or payment shall be assessed against the tax collector, or his successor, in the same manner and subject to the same penalties and provisions for appeal as are deficiencies assessed against taxpayers under Chapter 65, Title 27, Mississippi Code of 1972.

Each tax collector of the several counties shall, on or before the twentieth day of each month, file a report with and pay to the State Tax Commission all funds collected under the provisions of this section, less a commission of three percent (3%) which shall be retained by the tax collector as a commission for collecting such tax, and such commission shall be deposited in the county general fund. The report required to be filed shall cover all collections made during the calendar month next preceding the date on which the report is due and filed.

Any error in the report and remittance to the State Tax Commission may be adjusted on a subsequent report. If the error was in the collection by the tax collector, it shall be adjusted through the tax collector with the taxpayer before credit is allowed by the State Tax Commission.

All information relating to the collection of this tax by tax collectors and such records as the State Tax Commission may require shall be preserved in the tax collector's office for a period of three (3) years for audit by the State Tax Commission.

(7) The tax levied by this section shall not apply to the following:

(a) Transfers of legal ownership of motor vehicles currently registered or licensed in the transferor's name between husband and wife, parent and child, or grandparents and grandchildren, unless the transferor is a licensed dealer of motor vehicles and the transfer of the motor vehicle is made in the regular course of business.

(b) Transfers of legal ownership of motor vehicles pursuant to a will or pursuant to any law providing for the distribution of the property of one dying intestate.

(c) Transfers of legal ownership of motor vehicles ten (10) or more years after the date of the manufacture of such vehicle.

SOURCES: Laws, 1985, ch. 351, § 27; Laws, 1986, ch. 318; Laws, 2005, ch. 487, § 1; Laws, 2009, ch. 562, § 5, eff from and after July 1, 2009.

Editor's Note — Laws of 2009, ch. 562, § 6, as amended by Laws of 2009, 2nd Ex Sess, ch. 89, § 1, provides as follows:

"SECTION 6. Sections 1 and 2 of this act shall take effect and be in force from and after May 15, 2009. Sections 3, 4 and 5 of this act shall take effect and be in force from and after July 1, 2009, if a bill appropriating not less than $27,000,000.00 for fiscal year 2010 to the Motor Vehicle Ad Valorem Tax Reduction Fund is enacted into law."

Section 21 of Senate Bill No. 2045, Laws of 2009, 2nd Ex Sess, effective July 1, 2009, transferred $27,000,000.00 of the amount appropriated to the Tax Commission to the Motor Vehicle Ad Valorem Tax Reduction Fund, meeting the condition in the effective date of Section 6 of ch. 562, Laws of 2009.

Cross References — Duties of county tax collectors, generally, see §§ 27-1-5, 27-1-7, 27-1-13.

Tax upon sale of tangible personal property, generally, see § 27-65-17.

Seller's duty to collect tax, see § 27-65-31.

Sales tax revenue collected under the provisions of this section to be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in § 27-51-105, see § 27-65-75.

Penalties for failure to comply with chapter, see § 27-65-85.

Exemption from tax on motor vehicles those sold at retail and exported from Mississippi within 48 hours and registered and first used in another state, see § 27-65-111.

JUDICIAL DECISIONS

1. Transfer to trust.

The transfer of title to an individual's automobile, which is to remain in his use and possession, from his own name to that of a revocable trust, for which he is both creator and trustee, is not subject to state sales tax pursuant to the statute. Mississippi State Tax Comm'n v. Oscar E. Austin Trust, 719 So. 2d 1172 (Miss. 1998).

ATTORNEY GENERAL OPINIONS

A tax collector must charge sales tax to retitle a vehicle regardless of whether any consideration is paid or whether a tag is purchased. Bolen, May 16, 2002, A.G. Op. #02-0256.

RESEARCH REFERENCES

ALR. Sales and use taxes: exemption of casual, isolated, or occasional sales. 42 A.L.R.3d 292.

Sales or use tax on motor vehicle purchased out of state. 45 A.L.R.3d 1270.

Sales and use taxes on leased tangible personal property. 2 A.L.R.4th 859.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 199 et seq.

CJS. 60 C.J.S. Motor Vehicles § 136(1).

Lawyers' Edition. Validity of provision in tax statute requiring one person to collect tax imposed upon another. 4 L. Ed. 2d 1974.

TRIBAL TAX BY MISSISSIPPI BAND OF CHOCTAW INDIANS

SEC.
27-65-211. Definitions.
27-65-213. Legislative findings.
27-65-215. Exemption from sales or gross receipts tax.
27-65-217. Entry into tax collection agreements.
27-65-219. Approval of tax collection agreements.
27-65-221. Duration and renewal of tax collection agreements.

§ 27-65-211. Definitions.

As used in Sections 27-65-211 through 27-65-221, the following terms shall have the following meanings, unless the context clearly indicates a different meaning:

(a) "Reservation lands" mean those defined as Indian country under the provisions of 18 U.S.C. 1151(a) or (b).

(b) "Tribal tax" means any tax imposed by the Mississippi Band of Choctaw Indians on persons subject to the band's taxing powers.

SOURCES: Laws, 1986, ch. 322, § 1, eff from and after passage (approved March 13, 1986).

Federal Aspects — Provisions of 18 USC § 1151(a) or (b), referred to in (a), see 18 USCS § 1151(a) or (b).

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. 2d, Indians; Native Americans §§ 46 et seq., 50 et seq., 152 et seq.

CJS. 42 C.J.S., Indians §§ 26, 27, 40 et seq., 57, 59 et seq., 76 et seq., 136, 140, 141 et seq.

§ 27-65-213. Legislative findings.

The Legislature finds that the public interest of both Indians and non-Indians is best served by close cooperation between the state government and the Mississippi Band of Choctaw Indians. The Legislature finds this cooperation to be especially important in the area of taxation. Accordingly, the Legislature hereby authorizes the State Tax Commission to enter into tax collection agreements with the Mississippi Band of Choctaw Indians.

SOURCES: Laws, 1986, ch. 322, § 2, eff from and after passage (approved March 13, 1986).

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. 2d, Indians; Native Americans §§ 46 et seq., 50 et seq., 152 et seq.

CJS. 42 C.J.S., Indians §§ 26, 27, 40 et seq., 57, 59 et seq., 76 et seq., 136, 140, 141 et seq.

§ 27-65-215. Exemption from sales or gross receipts tax.

The State of Mississippi hereby relinquishes any jurisdiction it may have to levy and collect within reservation lands the sales or gross receipts tax imposed by Chapter 65 of Title 27, Mississippi Code of 1972, as it applies to sales by merchants on reservation lands of the Mississippi Band of Choctaw Indians when such merchants are authorized to do business on the reservation lands and are paying tribal sales taxes to the Mississippi Band of Choctaw Indians.

SOURCES: Laws, 1986, ch. 322, § 3, eff from and after passage (approved March 13, 1986).

RESEARCH REFERENCES

ALR. United States District Court jurisdiction of action brought by Indian tribe under 28 USCS § 1362. 65 A.L.R. Fed. 649.

Am Jur. 41 Am. Jur. 2d, Indians; Native Americans §§ 46 et seq., 50 et seq., 152 et seq.

CJS. 42 C.J.S., Indians §§ 26, 27, 40 et seq., 57, 59 et seq., 76 et seq., 136, 140, 141 et seq.

§ 27-65-217. Entry into tax collection agreements.

The State Tax Commission may enter into tax collection agreements with the Mississippi Band of Choctaw Indians. These agreements may provide for the collection by the State Tax Commission for the Indian tribe of any tribal sales or gross receipts tax from reservation lands which are hereby authorized to be imposed subject to the provisions of Sections 27-65-211 through 27-65-221.

SOURCES: Laws, 1986, ch. 322, § 4, eff from and after passage (approved March 13, 1986).

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. 2d, Indians; Native Americans §§ 46 et seq., 50 et seq., 152 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Indians, Form 4.1 (complaint, petition, or declaration — by motor fuel dealer — to recover motor fuel taxes wrongfully assessed by state agency against sales on Indian reservation).

22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Form 5.1 (complaint, petition or declaration — for declaratory relief from sales tax levy — taxes assessed on nontaxable transactions — motor fuel taxes wrongfully assessed by state agency against sales on Indian reservations).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 402.1.1 (complaint, petition, or declaration — for declaratory relief from sales tax levy — motor fuel taxes wrongfully assessed by state agency against sales on Indian reservations).

CJS. 42 C.J.S., Indians §§ 26, 27, 40 et seq., 57, 59 et seq., 76 et seq., 136, 140, 141 et seq.

§ 27-65-219. Approval of tax collection agreements.

Any tax collection agreement entered into pursuant to Sections 27-65-211 through 27-65-221 shall be binding and effective only upon approval of the Tribal Chief of the Mississippi Band of Choctaw Indians, the Governor and the Attorney General of the State of Mississippi.

SOURCES: Laws, 1986, ch. 322, § 5, eff from and after passage (approved March 13, 1986).

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. 2d, Indians; Native Americans §§ 46 et seq., 50 et seq., 152 et seq.

CJS. 42 C.J.S., Indians §§ 26, 27, 40 et seq., 57, 59 et seq., 76 et seq., 136, 140, 141 et seq.

§ 27-65-221. Duration and renewal of tax collection agreements.

Any tax collection agreements between the State Tax Commission and the Mississippi Band of Choctaw Indians shall be for a term not to exceed ten (10) years; however, such agreements shall be renewable upon expiration by the mutual consent of the parties.

SOURCES: Laws, 1986, ch. 322, § 6, eff from and after passage (approved March 13, 1986).

RESEARCH REFERENCES

Am Jur. 41 Am. Jur. 2d, Indians; Native Americans §§ 46 et seq., 50 et seq., 152 et seq.

CJS. 42 C.J.S., Indians §§ 26, 27, 40 et seq., 57, 59 et seq., 76 et seq., 136, 140, 141 et seq.

TAX ON RENTAL OF MOTOR VEHICLES

SEC.
27-65-231. Additional tax on persons engaging in business of renting motor vehicles.

§ 27-65-231. Additional tax on persons engaging in business of renting motor vehicles.

(1) In addition to the sales tax imposed in Section 27-65-23, Mississippi Code of 1972, there is hereby levied upon every person engaging or continuing in this state in the business of renting motor vehicles under rental agreements with a term of not more than thirty (30) continuous days each, a tax at the rate of six percent (6%) of the gross proceeds of such business derived from the rental of motor vehicles, except that motor vehicles with a gross vehicle weight exceeding ten thousand (10,000) pounds shall be excluded from the measure of this tax.

(2) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this section, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this section as are provided in said Sales Tax Law, except that in cases of conflict, then the provisions of this section shall control.

(3) On or before February 15 of each year, the proceeds of the tax imposed by this section on business rental activities shall be paid by the State Tax Commission to the county in which such proceeds were collected. Within seven (7) days after receipt of the tax proceeds, the county shall apportion and pay such tax proceeds as follows: The situs of the rental transactions from which tax proceeds were derived shall first be determined, and then the tax proceeds collected at a situs shall be distributed among the county, municipality and school district of the situs, as appropriate, in the same proportion and in the same manner that motor vehicle ad valorem taxes would be distributed among such taxing districts (based on their respective millage rates) if collected at the same time as the receipt of such proceeds and paid by a motor vehicle owner located at the same address as the situs of the rental transaction.

(4) The governing authorities of the counties, municipalities and school districts may expend the proceeds of such tax for any lawful purposes.

(5) The revenues received by counties and municipalities under subsection (3) of this section shall be deposited in the general fund of the counties and municipalities, and the revenues received by the school districts shall be deposited in any fund designated by the school district.

(6) The revenues received by counties, municipalities and school districts under subsection (3) of this section shall be included and considered as proceeds of ad valorem taxes for the purposes of the growth limitation on ad valorem taxes under Sections 27-39-321 and 27-39-305.

(7) The tax authorized herein shall be in addition to any other tax authorized by law to be levied on the business activities described in this section.

SOURCES: Laws, 1991, ch. 510, § 1; Laws, 1993, ch. 410, § 1, eff from and after July 1, 1993.

Cross References — Exemption from ad valorem taxes, see § 27-51-41.

MUNICIPAL SPECIAL SALES TAX

Sec.	
27-65-241.	Certain municipalities authorized to impose special sales tax on persons engaging in business in municipality; exemptions; voter approval required before levying tax; authorized use of tax proceeds; establishment of commission; expenditure of special tax revenue to be in accordance with master plan; establishment of master plan [Repealed effective July 1, 2035].
27-65-243.	Exemption of certain businesses from tax imposed in § 27-65-241.

§ 27-65-241. Certain municipalities authorized to impose special sales tax on persons engaging in business in municipality; exemptions; voter approval required before levying tax; authorized use of tax proceeds; establishment of commission; expenditure of special tax revenue to be in accordance with master plan; establishment of master plan [Repealed effective July 1, 2035].

(1) As used in this section, the following terms shall have the meanings ascribed to them in this section unless otherwise clearly indicated by the context in which they are used:

(a) "Hotel" or "motel" means and includes a place of lodging that at any one time will accommodate transient guests on a daily or weekly basis and that is known to the trade as such. Such terms shall not include a place of lodging with ten (10) or less rental units.

(b) "Municipality" means any municipality in the State of Mississippi with a population of one hundred fifty thousand (150,000) or more according to the most recent federal decennial census.

(c) "Restaurant" means and includes all places where prepared food is sold and whose annual gross proceeds of sales or gross income for the preceding calendar year equals or exceeds One Hundred Thousand Dollars ($100,000.00). The term "restaurant" shall not include any nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. For the purpose of calculating gross proceeds of sales or gross income, the sales or income of all establishments owned, operated or controlled by the same person, persons or corporation shall be aggregated.

(2)(a) Subject to the provisions of this section, the governing authorities of a municipality may impose upon all persons as a privilege for engaging or continuing in business or doing business within such municipality, a special sales tax at the rate of not more than one percent (1%) of the gross proceeds of sales or gross income of the business, as the case may be, derived from any of the activities taxed at the rate of seven percent (7%) or more under the Mississippi Sales Tax Law, Section 27-65-1 et seq.

(b) The tax levied under this section shall apply to every person making sales of tangible personal property or services within the municipality but shall not apply to:

(i) Sales exempted by Sections 27-65-19, 27-65-101, 27-65-103, 27-65-105, 27-65-107, 27-65-109 and 27-65-111 of the Mississippi Sales Tax Law;

(ii) Gross proceeds of sales or gross income of restaurants derived from the sale of food and beverages;

(iii) Gross proceeds of sales or gross income of hotels and motels derived from the sale of hotel rooms and motel rooms for lodging purposes;

(iv) Retail sales of food for human consumption not purchased with food stamps issued by the United States Department of Agriculture, or other federal agency, but which would be exempt under Section 27-65-

111(o) from the taxes imposed by this chapter if the food items were purchased with food stamps;

(v) Gross income of businesses engaging or continuing in the business of TV cable systems, subscription TV services, and other similar activities, including, but not limited to, cable Internet services;

(vi) Wholesale sales of food and drink for human consumption sold to full service vending machine operators; and

(vii) Wholesale sales of light wine, beer and alcoholic beverages.

(3)(a) Before any tax authorized under this section may be imposed, the governing authorities of the municipality shall adopt a resolution declaring its intention to levy the tax, setting forth the amount of the tax to be imposed, the purposes for which the revenue collected pursuant to the tax levy may be used and expended, the date upon which the tax shall become effective, the date upon which the tax shall be repealed, and calling for an election to be held on the question. The date of the election shall be set in the resolution. Notice of the election shall be published once each week for at least three (3) consecutive weeks in a newspaper published or having a general circulation in the municipality, with the first publication of the notice to be made not less than twenty-one (21) days before the date fixed in the resolution for the election and the last publication to be made not more than seven (7) days before the election. At the election, all qualified electors of the municipality may vote. The ballots used at the election shall have printed thereon a brief description of the sales tax, the amount of the sales tax levy, a description of the purposes for which the tax revenue may be used and expended and the words "FOR THE LOCAL SALES TAX" and "AGAINST THE LOCAL SALES TAX" and the voter shall vote by placing a cross (X) or check mark (✓) opposite his choice on the proposition. When the results of the election have been canvassed by the election commissioners of the municipality and certified by them to the governing authorities, it shall be the duty of such governing authorities to determine and adjudicate whether at least three-fifths (3⁄5) of the qualified electors who voted in the election voted in favor of the tax. If at least three-fifths (3⁄5) of the qualified electors who voted in the election voted in favor of the tax, the governing authorities shall adopt a resolution declaring the levy and collection of the tax provided in this section and shall set the first day of the second month following the date of such adoption as the effective date of the tax levy. A certified copy of this resolution, together with the result of the election, shall be furnished to the Department of Revenue not less than thirty (30) days before the effective date of the levy.

(b) A municipality shall not hold more than two (2) elections under this subsection.

(4) The revenue collected pursuant to the tax levy imposed under this section may be expended to pay the cost of road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and to pay the costs of water, sewer and drainage projects in accordance with a master plan adopted by the commission established pursuant to subsection (7).

(5)(a) The special sales tax authorized by this section shall be collected by the Department of Revenue, shall be accounted for separately from the amount of sales tax collected for the state in the municipality and shall be paid to the municipality. The Department of Revenue may retain one percent (1%) of the proceeds of such tax for the purpose of defraying the costs incurred by the department in the collection of the tax. Payments to the municipality shall be made by the Department of Revenue on or before the fifteenth day of the month following the month in which the tax was collected.

(b) The proceeds of the special sales tax shall be placed into a special municipal fund apart from the municipal general fund and any other funds of the municipality, and shall be expended by the municipality solely for the purposes authorized in subsection (4) of this section. The records reflecting the receipts and expenditures of the revenue from the special sales tax shall be audited annually by an independent certified public accountant. The accountant shall make a report of his findings to the governing authorities of the municipality and file a copy of his report with the Secretary of the Senate and the Clerk of the House of Representatives. The audit shall be made and completed as soon as practical after the close of the fiscal year of the municipality, and expenses of the audit shall be paid from the funds derived by the municipality pursuant to this section.

(c) All provisions of the Mississippi Sales Tax Law applicable to filing of returns, discounts to the taxpayer, remittances to the Department of Revenue, enforced collection, rights of taxpayers, recovery of improper taxes, refunds of overpaid taxes or other provisions of law providing for imposition and collection of the state sales tax shall apply to the special sales tax authorized by this section, except where there is a conflict, in which case the provisions of this section shall control. Any damages, penalties or interest collected for the nonpayment of taxes imposed under this section, or for noncompliance with the provisions of this section, shall be paid to the municipality on the same basis and in the same manner as the tax proceeds. Any overpayment of tax for any reason that has been disbursed to a municipality or any payment of the tax to a municipality in error may be adjusted by the Department of Revenue on any subsequent payment to the municipality pursuant to the provisions of the Mississippi Sales Tax Law. The Department of Revenue may, from time to time, make such rules and regulations not inconsistent with this section as may be deemed necessary to carry out the provisions of this section, and such rules and regulations shall have the full force and effect of law.

(6) If a municipality expands its corporate boundaries, the governing authorities of the municipality may not impose the special sales tax in the annexed area unless the tax is approved at an election conducted, as far as is practicable, in the manner provided in subsection (3) of this section, except that only qualified electors in the annexed area may vote in the election.

(7)(a) Any municipality that levies the special sales tax authorized under this section shall establish a commission as provided for in this section.

Expenditures of revenue from the special sales tax authorized by this section shall be in accordance with a master plan adopted by the commission pursuant to this subsection.

(b) The commission shall be composed of ten (10) voting members who shall be known as commissioners appointed as follows:

(i) Four (4) members representing the business community in the municipality appointed by the local chamber of commerce for initial terms of one (1), two (2), four (4) and five (5) years respectively. The members appointed pursuant to this paragraph shall be persons who represent businesses located within the city limits of the municipality.

(ii) Three (3) members shall be appointed at large by the mayor of the municipality, with the advice and consent of the legislative body of the municipality, for initial terms of two (2), three (3) and four (4) years respectively. All appointments made by the mayor pursuant to this paragraph shall be residents of the municipality.

(iii) One (1) member shall be appointed at large by the Governor for an initial term of four (4) years. All appointments made by the Governor pursuant to this paragraph shall be residents of the municipality.

(iv) One (1) member shall be appointed at large by the Lieutenant Governor for an initial term of four (4) years. All appointments made by the Lieutenant Governor pursuant to this paragraph shall be residents of the municipality.

(v) One (1) member shall be appointed at large by the Speaker of the House of Representatives for a term of four (4) years. All appointments made by the Speaker of the House of Representatives pursuant to this paragraph shall be residents of the municipality.

(c) The terms of all appointments made subsequent to the initial appointment shall be made for five (5) years. Any vacancy which may occur shall be filled in the same manner as the original appointment and shall be made for the unexpired term. Each member of the commission shall serve until his successor is appointed and qualified.

(d) The mayor of the municipality shall designate a chairman of the commission from among the membership of the commission. The vice chairman and secretary shall be elected by the commission from among the membership of the commission for a term of two (2) years. The vice chairman and secretary may be reelected, and the chairman may be reappointed.

(e) The commissioners shall serve without compensation.

(f) Any commissioner shall be disqualified and shall be removed from office for either of the following reasons:

(i) Conviction of a felony in any state court or in federal court; or

(ii) Failure to attend three (3) consecutive meetings without just cause.

If a commissioner is removed for any of the above reasons, the vacancy shall be filled in the manner prescribed in this section and shall be made for the unexpired term.

(g) A quorum shall consist of six (6) voting members of the commission. The commission shall adopt such rules and regulations as may govern the time and place for holding meetings, regular and special.

(h) The commission shall, with input from the municipality, establish a master plan for road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and for water, sewer and drainage projects. Expenditures of the revenue from the tax authorized to be imposed pursuant to this section shall be made at the discretion of the governing authorities of the municipality if the expenditures comply with the master plan. The commission shall monitor the compliance of the municipality with the master plan.

(8) The governing authorities of any municipality that levies the special sales tax authorized under this section are authorized to incur debt, including bonds, notes or other evidences of indebtedness, for the purpose of paying the costs of road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and to pay the costs of water, sewer and drainage projects in accordance with a master plan adopted by the commission established pursuant to subsection (7) of this section. Any bonds or notes issued to pay such costs may be secured by the proceeds of the special sales tax levied pursuant to this section or may be general obligations of the municipality and shall satisfy the requirements for the issuance of debt provided by Sections 21-33-313 through 21-33-323.

(9) This section shall stand repealed from and after July 1, 2035.

SOURCES: Laws, 2009, ch. 328, § 1; Laws, 2011, ch. 483, § 1; Laws, 2014, ch. 530, § 39, eff from and after passage (approved April 24, 2014.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (4). The phrase "Section 2 of this act" was changed to "subsection (7) of this section". The Joint Committee ratified the correction at its July 13, 2009, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of (7)(h) as amended by Section 1 of Chapter 483, Laws of 2011, by substituting "The commission shall monitor" for "The committee shall monitor." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Editor's Note — Laws of 2009, ch. 493, § 3, effective August 7, 2009, provides:

"SECTION 3. If the date of repeal contained in Section 27-65-241(8) is removed or extended beyond July 1, 2014, a municipality that is levying a special sales tax under such section before July 1, 2014, shall not levy the tax after June 30, 2014, unless an election is conducted, canvassed and the results determined and adjudicated, as far as practical, in the manner provided in Section 27-65-241(3) and at least three-fifths (3/5) of the qualified electors who vote in the election vote in favor of continuing the levy of the special sales tax."

By letter dated August 28, 2009, the United States Attorney General determined that § 3 of ch. 493, Laws of 2009, includes provisions that are enabling in nature and that any changes affecting voting rights that are adopted pursuant to § 3, of ch. 493 will be subject to review under Section 5 of the Voting Rights Act of 1965, as amended and extended.

On August 7, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 2009, ch. 328, § 1.

Chapter 483, Laws of 2011, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act. The United States Attorney General responded in a letter dated May 29, 2012, and interposed no objection to the substantive provisions of Chapter 483. The letter also said that certain other changes made by Chapter 483 were not yet capable of administration and therefore were not ripe for review by the United States Attorney General, but the State must seek review of those provisions under Section 5 after they have been implemented. The United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5. Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. Accordingly, those other provisions of Chapter 483 do not have to be submitted for preclearance, and all of Chapter 483 is now in effect.

Laws of 2014, ch. 530, § 47, provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage [approved April 24, 2014], and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Cross References — Members of a commission established by the City of Jackson pursuant to this section cannot serve as members of the Capitol Complex Improvement District Advisory Committee, see § 29-5-213.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

§ 27-65-243. Exemption of certain businesses from tax imposed in § 27-65-241.

The gross income of businesses engaging or continuing in the business of providing telecommunications services and other similar services, including, but not limited to, Internet services, Internet protocol television (IPTV) services, satellite television services and Mobile TV broadcasting services, shall be exempt from the special sales tax imposed in Section 27-65-241.

SOURCES: Laws, 2009, ch. 332, § 14, eff from and after July 1, 2009.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

CHAPTER 67

Use or Compensating Taxes

Article 1. Use Tax 27-67-1
Article 3. Wholesale Compensating Tax. [Repealed]
Article 5. Salesmen's Tax 27-67-501

ARTICLE 1.

USE TAX.

SEC.
27-67-1. Title of article.
27-67-3. Definitions.
27-67-4. Mail order sales.
27-67-5. Tax levy.
27-67-6. Exemption for boxes, etc. brought into state for use with materials for federal government.
27-67-7. Exemptions.
27-67-8. Examination of records of religious institution; retroactive application of exemption from use tax on certain property used by religious institutions.
27-67-9. Registration of seller.
27-67-11. Seller to collect tax from purchaser.
27-67-13. Liability of user.
27-67-15. Issuance of permits.
27-67-17. Payment of tax to commissioner, filing of returns.
27-67-19. Extension of time; damages.
27-67-21. Tax constitutes a debt.
27-67-23 through 27-67-27. Repealed.
27-67-29. Disbursement from treasury to taxpayer.
27-67-31. Administration of article by commissioner; monthly distribution of funds.
27-67-32. Repealed.
27-67-33. Prior claims not affected.
27-67-35. Repealed.

§ 27-67-1. Title of article.

This article may be cited as the "Mississippi Use Tax Law."

SOURCES: Codes, 1942, § 10146-01; Laws, 1955, Ex. Sess. ch. 111, § 1; Laws, 1960, ch. 479, § 1, eff June 1, 1960.

Cross References — Payment of use tax in connection with motor vehicle license, see §§ 27-19-147 through 27-19-151.

Gasoline and motor fuel taxes, see § 27-55-1 et seq.

Sales tax, see § 27-65-1 et seq.

Salesmen's tax, see § 27-67-501 et seq.

Uniform Sales and Use Tax Administration Law, see § 27-68-1 et seq.

Requirement that an applicant for a first certificate of title to a motor vehicle provide evidence relative to liability for a use tax under this article, see § 63-21-15.

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 167 et seq.

CJS. 53 C.J.S., Licenses §§ 50, 52, 78, 79.

Lawyers' Edition. Tax legislation as violating Federal Constitution's First Amendment — Supreme Court cases. 103 L. Ed. 2d 951.

§ 27-67-3. Definitions.

Whenever used in this article, the words, phrases and terms shall have the meaning ascribed to them as follows:

(a) "Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular in number. "Person" shall also include husband or wife, or both, where joint benefits are derived from the operation of a business taxed hereunder or where joint benefits are derived from the use of property taxed hereunder.

(d) "Taxpayer" means any person liable for the payment of any tax hereunder, or liable for the collection and payment of the tax.

(e) "Sale" or "purchase" means the exchange of properties for money or other consideration, and the barter of properties or products. Every closed transaction by which title to, or possession of, tangible personal property or specified digital products passes shall constitute a taxable event. A transaction whereby the possession of property or products is transferred but the seller retains title as security for payment of the selling price shall be deemed a sale.

(f) "Purchase price" or "sales price" means the total amount for which tangible personal property or specified digital product is purchased or sold, valued in money, including installation and service charges, and freight charges to the point of use within this state, without any deduction for cost of property or products sold, expenses or losses, or taxes of any kind except those exempt by the sales tax law. "Purchase price" or "sales price" shall not include cash discounts allowed and taken or merchandise returned by customers when the total sales price is refunded either in cash or by credit, and shall not include amounts allowed for a trade-in of similar property or products. "Purchase price" or "sales price" does not include finance charges, carrying charges or any other addition to the selling price as a result of deferred payments by the purchaser.

(g) "Lease" or "rent" means any agreement entered into for a consideration that transfers possession or control of tangible personal property or specified digital products to a person for use within this state.

(h) "Value" means the estimated or assessed monetary worth of a thing or property. The value of property or products transferred into this state for sales promotion or advertising shall be an amount not less than the cost paid by the transferor or donor. The value of property or products which have been used in another state shall be determined by its cost less straight line depreciation provided that value shall never be less than twenty percent (20%) of the cost or other method acceptable to the commissioner. On property or products imported by the manufacturer thereof for rental or lease within this state, value shall be the manufactured cost of the property and freight to the place of use in Mississippi.

(i) "Tangible personal property" means personal property perceptible to the human senses or by chemical analysis, as opposed to real property or intangibles. "Tangible personal property" shall include printed, mimeographed, multigraphed matter, or material reproduced in any other manner, and books, catalogs, manuals, publications or similar documents covering the services of collecting, compiling or analyzing information of any kind or nature. However, reports representing the work of persons such as lawyers, accountants, engineers and similar professionals shall not be included. "Tangible personal property" shall also include tangible advertising or sales promotion materials such as, but not limited to, displays, brochures, signs, catalogs, price lists, point of sale advertising materials and technical manuals. Tangible personal property shall also include computer software programs.

(j) "Person doing business in this state," "person maintaining a place of business within this state," or any similar term means any person having within this state an office, a distribution house, a salesroom or house, a warehouse, or any other place of business, or owning personal property located in this state used by another person, or installing personal property in this state. This definition also includes any person selling or taking orders for any tangible personal property, either personally, by mail or through an employee representative, salesman, commission agent, canvasser, solicitor or independent contractor or by any other means from within the state.

Any person doing business under the terms of this article by reason of coming under any one or more of the qualifying provisions listed above shall be considered as doing business on all transactions involving sales to persons within this state.

(k) "Use" or "consumption" means the first use or intended use within this state of tangible personal property or specified digital product and shall include rental or loan by owners or use by lessees or other persons receiving benefits from use of the property or product. "Use" or "consumption" shall include the benefit realized or to be realized by persons importing or causing to be imported into this state tangible advertising or sales promotion materials.

(*l*) "Storage" means keeping tangible personal property or specified digital product in this state for subsequent use or consumption in this state.

(m) "Specified digital products" shall have the meaning ascribed to such term in Section 27-65-26.

SOURCES: Codes, 1942, § 10146-02; Laws, 1955, Ex. Sess. ch. 111, § 2; Laws, 1956, ch. 422, § 1; Laws, 1960, ch. 479, § 2; Laws, 1968, ch. 588, § 12; Laws, 1980, ch. 536, § 2; Laws, 1988, ch. 491, § 3; Laws, 1988, ch. 509, § 2; Laws, 1989, ch. 409, § 1; Laws, 2009, ch. 332, § 3; Laws, 2009, ch. 492, § 107; Laws, 2014, ch. 472, § 3, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 3 of ch. 332, Laws of 2009, effective from and after July 1, 2009 (approved March 12, 2009), amended this section. Section 107 of ch. 492, Laws of 2009, effective from and after July 1, 2010 (approved April 6, 2009), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 472, § 4, effective July 1, 2014, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws or use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

State Tax Commission, see § 27-3-1 et seq.

Chairman of State Tax Commission, see § 27-3-3.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The state use tax is not a tax on interstate commerce, but a tax upon the using, storing, or consuming of tangible personal property within the state. Mavar Shrimp & Oyster Co. v. Stone, 221 Miss. 519, 73 So. 2d 109 (1954).

Where a shrimp processor purchased parts and equipment outside of the state which were shipped into the state and delivered to the processor by common carrier and immediately were placed on a fleet of boats used exclusively by the processor in hauling its raw fish produce from outside the state to the plant inside the state, the parts and equipment ceased to be in interstate commerce when they came to rest within the state and were subject to the use tax. Mavar Shrimp & Oyster Co. v. Stone, 221 Miss. 519, 73 So. 2d 109 (1954).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Question as to what constitutes doing business in this state, territorial jurisdiction, and due process of law is judicial, and court is not bound by legislative declaration or definition as to what constitutes doing business, territorial jurisdiction, or due process of law, unless such declaration or definition is sanctioned or authorized by constitutional limitations. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

Use Tax Law, Chapter 120, Laws of 1942, is unconstitutional as to its requirement that a nonresident seller shall collect and pay tax on sales consummated in Tennessee by delivery of property to a common carrier for transportation to purchasers in Mississippi, when the nonresident seller is not doing business in Mississippi and property was sold on orders taken by nonresident salesmen, as it violated commerce clause by imposing a burden on interstate commerce and denies to seller equal protection and due process of law. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

RESEARCH REFERENCES

ALR. Reusable soft drink bottles as subject to sales or use taxes. 97 A.L.R.3d 1205.

Sales and use taxes on sale or lease of mailing or customer list. 80 A.L.R.4th 1126.

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Forms 11 et seq. (use taxes).

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

CJS. 85 C.J.S., Taxation §§ 2144, 2213-2215.

§ 27-67-4. Mail order sales.

(1) For purposes of this article, a "mail order sale" is a sale of tangible personal property or specified digital products, ordered by mail or other means as described in subsection (2)(e), to a purchaser who is in this state at the time the order is remitted, from a person who receives the order in another state of the United States, or in a commonwealth, territory or other area under the jurisdiction of the United States, and which person transports the property or products or causes the property or products to be transported, whether or not

by mail, from any jurisdiction of the United States, including this state, to the purchaser in this state who ordered the property or products or to another person in this state for whom the purchaser ordered the property. For purposes of this definition, it will be presumed that every purchaser resident in this state who remits an order shall have been in this state at the time the order was remitted.

(2) Every person doing business in this state who makes a mail order sale is subject to the power of this state to levy and collect the tax imposed by this article when:

(a) The person is a corporation doing business under the laws of this state or a person domiciled in, a resident of, or a citizen of, this state;

(b) The person maintains retail establishments or offices in this state, whether the mail order sales thus subject to taxation by this state result from or are related in any other way to the activities of such establishments or offices;

(c) The person has agents in this state who solicit business or transact business on his behalf, whether the mail order sales thus subject to taxation by this state result from or are related in any other way to such solicitation or transaction of business;

(d) The property was delivered in this state in fulfillment of a sales contract that was entered into in this state, in accordance with applicable conflict of laws rules, when a purchaser in this state accepted an offer by ordering the property;

(e) The person, by purposefully or systematically exploiting the consumer market provided by this state by any media-assisted, media-facilitated or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, television, radio or other electronic media, or magazine or newspaper advertisements or other media, creates nexus with this state;

(f) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this state's taxing power; or

(g) The person consents, expressly or by implication, to the imposition of the tax imposed by this part.

(3) Every person engaged in the business of making mail order sales is subject to the requirements of this article for cooperation in collection of taxes and in administration of this article, except that no fee shall be imposed upon such person for carrying out any required activity.

(4) The tax required under this section to be collected, and any amount unreturned to a purchaser that is not tax but was collected from the purchaser under the representation that it was tax, constitute funds of the State of Mississippi from the moment of collection.

SOURCES: Laws, 1988, ch. 509, § 1; Laws, 2009, ch. 332, § 7, eff from and after July 1, 2009.

Cross References — "Specified digital products" defined, see § 27-65-26.

§ 27-67-5. Tax levy.

There is hereby levied, assessed and shall be collected from every person a tax for the privilege of using, storing or consuming, within this state, any tangible personal property or specified digital product possession of which is acquired in any manner.

(a) The use tax hereby imposed and levied shall be collected at the same rates as imposed under Section 27-65-20, and Sections 27-65-17, 27-65-18, 27-65-19, 27-65-24, 27-65-25 and 27-65-26 computed on the purchase or sales price, or value, as defined in this article.

(b) It shall be the duty of the tax collectors of the several counties, or the commissioner, as the case may be, to collect, remit and account for the tax on the use of all vehicles licensed or registered by the State of Mississippi for the first time, except when the Mississippi use tax was collected by an authorized out-of-state dealer at the time of purchase, or when the use thereof was exempt by Section 27-67-7. The tax collector or the commissioner shall give to the person registering the vehicle a receipt in a form prescribed and furnished by the Department of Revenue for the amount of tax collected.

The tax collector or commissioner is expressly prohibited from issuing a license tag to any applicant without collecting the tax levied by this article, unless positive proof is filed, together with the application for the license tag, that the Mississippi tax has been paid, or that the sale was exempt by Section 27-67-7.

Persons not engaging and continuing in business so as to be registered for payment of sales and/or use tax may pay use tax due on the first use of boats, airplanes, equipment or other tangible personal property and specified digital products to county tax collectors who are hereby authorized to accept such payments on behalf of the commissioner. Receipts for all such payments shall be given to taxpayers in a form prescribed and furnished by the Department of Revenue.

County tax collectors and the commissioner shall be liable for the tax they are required hereby to collect, and taxes which are in fact collected under authority of this section; and failure to properly collect or maintain proper records shall not relieve them of liability for payment to the commissioner. Deficiencies in collection or payment shall be assessed against the tax collector or commissioner in the same manner and subject to the same penalties and provisions for appeal as are deficiencies assessed against taxpayers.

A dealer authorized to collect and remit the tax to the Department of Revenue shall give to the purchaser a receipt for the payment of the tax, in a form prescribed and furnished by the commissioner, which shall serve as proof of payment to the tax collector of the county in which the license is to be issued.

Each tax collector of the several counties shall, on or before the twentieth day of each month, file a report with and pay to the commissioner all funds collected under the provisions of this article, less a commission of five percent (5%) which shall be retained by the tax collector as a commission for collecting such tax and be deposited in the county general fund. The report required to be filed shall cover all collections made during the calendar month next preceding the date on which the report is due and filed.

Any error in the report and remittance to the commissioner may be adjusted on a subsequent report. If the error was in the collection by the tax collector, it shall be adjusted through the tax collector with the taxpayer before credit is allowed by the commissioner.

All information relating to the collection of use tax by tax collectors and such records as the commissioner may require shall be preserved in the tax collector's office for a period of three (3) years for audit by the commissioner.

SOURCES: Codes, 1942, § 10146-03; Laws, 1955, Ex. Sess. ch. 111, § 3; Laws, 1956, ch. 422, § 2; Laws, 1960, ch. 479, § 3; Laws, 1966, ch. 655, § 1; Laws, 1968, ch. 361, § 55; Laws, 1980, ch. 536, § 3; Laws, 1984, ch. 458, § 7; Laws, 1986, ch. 451, § 6; Laws, 1990, 1st Ex Sess, ch. 71, § 22; Laws, 1995, ch. 508, § 6; Laws, 1996, ch. 503, § 3; Laws, 2009, ch. 332, § 4; Laws, 2010, ch. 449, § 5, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (a). The reference to "Section 27-65-24" was changed to "Section 27-65-20." Section 27-65-24 was deleted from the Code because it was a duplicate of Section 27-65-20, with the same source. The Joint Committee ratified this correction at its August 5, 2008, meeting.

Cross References — Payment of use tax as condition to obtaining motor vehicle license, see §§ 27-19-59, 27-19-147 to 27-19-151.

Requirement that owner of mobile home pay use tax required by this section prior to registering the mobile home, see § 27-53-5.

Excise taxes on gasoline and other motor fuels, see § 27-55-11.

Interstate commercial carriers motor fuel tax in lieu of use tax, see §§ 27-61-5, 27-61-11.

Sales tax generally, see § 27-65-1 et seq.

Bonds to secure payment of tax upon contracting services, see § 27-65-21.

"Specified digital products" defined, see § 27-65-26.

Tax levied in this Article not to be collected on use, storage or consumption of boxes, crates, cartons and other packaging material brought into state for use to pack or ship materials for federal government, see § 27-67-6.

Registration of seller of tangible personal property, see § 27-67-9.

Seller to collect use tax on tangible personal property, see § 27-67-11.

Salesmen's tax, see § 27-67-505.

Application for certificate of title to motor vehicle, see § 63-21-15.

JUDICIAL DECISIONS

1. Liability for tax.
2. Judicial review.
3.-5. [Reserved for future use.]
6. Under former law.

1. Liability for tax.

Imposition of the use-tax statute is not limited to "principal-business" use; although the Mississippi Department of Revenue did not contend that an airplane dealership was in the principal business of chartering flights, the dealership was required to pay a use tax where it performed charters and engaged in personal use before a sale. Miss. Dep't of Revenue v. Johnny Reb Aviation, LLC, 167 So. 3d 1266 (Miss. Ct. App. 2014), writ of certiorari denied en banc by 168 So. 3d 962, 2015 Miss. LEXIS 356 (Miss. July 2, 2015).

Just as there is no "principal-business" requirement, there is also no "for-profit" requirement in the use-tax statute; therefore, that an airplane dealership maintained that it strictly complied with Federal Aviation Administration rules and never earned a profit off of any of its flights did not mean it never used its planes in a manner that subjected the planes to Mississippi's use tax. Evidence of any non-sales-related use, whether personal or for a charter in which the dealership only recouped its operating costs, sufficiently justified a use-tax assessment. Miss. Dep't of Revenue v. Johnny Reb Aviation, LLC, 167 So. 3d 1266 (Miss. Ct. App. 2014), writ of certiorari denied en banc by 168 So. 3d 962, 2015 Miss. LEXIS 356 (Miss. July 2, 2015).

Gas company was liable for use tax on the gas it produced and used in its operations because the use tax assessment arose following the company's use of refined, processed gas for its plant and lease operations, prior to the audit, the company purchased fuel from third parties and paid sales tax on those purchases, and the company's use of the processed gas for fuel gave rise to use tax at the same rates as contained in Mississippi sales tax law only to the extent sales tax was not paid on the plant and lease fuel. Pursue Energy Corp. v. Miss. State Tax Comm'n, 968 So. 2d 368 (Miss. 2007).

2. Judicial review.

In a taxation dispute, a chancellor erred by vacating a decision from the Mississippi Department of Revenue (MDOR) that an airplane dealership had to pay a use tax, which was the same as the sales-tax rate, where substantial documentary evidence supported the conclusions that the dealership had been using for charters the airplanes that it was trying to sell. This determination was outside of the chancery court's appellate purview, which was limited to deciding if the MDOR's decision was supported by substantial evidence or was arbitrary and capricious. Miss. Dep't of Revenue v. Johnny Reb Aviation, LLC, 167 So. 3d 1266 (Miss. Ct. App. 2014), writ of certiorari denied en banc by 168 So. 3d 962, 2015 Miss. LEXIS 356 (Miss. July 2, 2015).

3.-5. [Reserved for future use.]

6. Under former law.

Collection in 1947 and 1948 by nonresident seller of two percent of invoice price of all merchandise sold customers in Mississippi for seller's protection if held liable for use tax, but which seller does not owe to Mississippi, cannot be used as bar to seller's claim for refund of use taxes paid under protest in 1945 and 1946, even if seller fails to refund to its customers taxes collected in 1947 and 1948. Stone v. Reichman-Crosby Co., 43 So. 2d 184 (Miss. 1949), appeal dismissed, cert. denied, 339 U.S. 917, 70 S. Ct. 625, 94 L. Ed. 1342 (1950).

Tax under this section [Code 1942, § 10146-03] is for use or storage in Mississippi and there can be no tax on use in Mississippi until there is use in Mississippi and until purchased property attains that status tax cannot be for a use that has not occurred. Stone v. Reichman-Crosby Co., 43 So. 2d 184 (Miss. 1949), appeal dismissed, cert. denied, 339 U.S. 917, 70 S. Ct. 625, 94 L. Ed. 1342 (1950).

Decision on former appeal of same case that Use Tax Law of this state is unconstitutional in its requirement that foreign seller collect and pay use tax on goods sold to Mississippi residents when seller is nondomesticated foreign corporation having no place of business or any agent in this state will be adhered to on subsequent appeal, and case does not become new case because State of Tennessee, from which state goods are shipped, is claimed to have relevant Sales Tax Law, because coming to rest in this state feature of original law has been eliminated, or because two salesmen of seller happen to reside in Mississippi for their own personal convenience and not that of employer, since principles controlling law of case doctrine are more binding upon courts than law of precedent. Stone v. Reichman-Crosby Co., 43 So. 2d 184 (Miss. 1949), appeal dismissed, cert. denied, 339 U.S. 917, 70 S. Ct. 625, 94 L. Ed. 1342 (1950).

Use tax statute violates due process clause of both state and federal constitution in requiring foreign seller, nondomesticated foreign corporation, having no place of business or any agent in this state, its only intrastate activity being sending into state of nonresident solicitors and two resident solicitors to take orders effective only when approved at home office, to become collecting agent for use tax on goods sold by corporation on orders taken as stated, when sales are completed by delivery of goods to common carrier in foreign state. Stone v. Reichman-Crosby Co., 43 So. 2d 184 (Miss. 1949), appeal dismissed, cert. denied, 339 U.S. 917, 70 S. Ct. 625, 94 L. Ed. 1342 (1950).

Laws of 1948, ch. 457, amending this section by eliminating provision that tax imposed shall not apply to use of article of tangible personal property sold or processed outside of state until transportation is ended and article commingled with mass of property within state, does not affect decision that statute is unconstitutional in its requirement that foreign seller must collect and pay tax on goods sold on orders given to nonresident solicitors, effective only when approved at home office, sales being completed by delivery to common carrier in foreign state by nondomesticated foreign corporation, having no place of business in this state. Stone v. Reichman-Crosby Co., 43 So. 2d 184 (Miss. 1949), appeal dismissed, cert. denied, 339 U.S. 917, 70 S. Ct. 625, 94 L. Ed. 1342 (1950).

1948 amendment of this section [Code 1942, § 10146-03], which eliminates provision that use tax shall become due when shipment shall come to rest in Mississippi and is commingled with general mass of goods, cannot be construed retroactively to affect tax litigation involving years prior to effective date of amendment as to tax laws must be given prospective operation, unless contrary intention is manifested by clear and positive expression. Stone v. Reichman-Crosby Co., 43 So. 2d 184 (Miss. 1949), cert. denied, 339 U.S. 917, 70 S. Ct. 625, 94 L. Ed. 1342, former opinion in 204 Miss. 122, 37 So. 2d 22 (1948).

Use Tax Law, Chapter 120, Laws of 1942, is unconstitutional as to its requirement that a nonresident seller shall collect and pay tax on sales consummated in Tennessee by delivery of property to a common carrier for transportation to purchasers in Mississippi, when the nonresident seller is not doing business in Mississippi and property was sold on orders taken by nonresident salesmen, as it violated commerce clause by imposing a burden on interstate commerce and denies to seller equal protection and due process of law. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

Nonresident seller engaged exclusively in interstate commerce is neither subject to state's taxing power nor to state's jurisdiction to subject seller to personal liability for failure to collect and pay tax levied against citizens of this state. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

RESEARCH REFERENCES

ALR. State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase. 4 A.L.R.2d 244.

Use tax on property purchased by nonresident in another state. 41 A.L.R.2d 534.

Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax — post-complete auto transit cases. 71 A.L.R.5th 671.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 201 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Forms 11 et seq. (use taxes).

CJS. 53 C.J.S., Licenses §§ 50, 52, 78, 79.

85 C.J.S., Taxation §§ 2168, 2213-2215.

§ 27-67-6. Exemption for boxes, etc. brought into state for use with materials for federal government.

The tax levied in Article 1, Chapter 67, Title 27, Mississippi Code of 1972, shall not be collected on the use, storage or consumption of boxes, crates, cartons and other packaging material brought into this state for use to pack or ship materials for the federal government.

SOURCES: Laws, 1992, ch. 548 § 14, eff from and after passage (approved May 14, 1992).

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2168.

§ 27-67-7. Exemptions.

The tax levied by this article shall not be collected in the following instances:

(a) On the use, storage or consumption of any tangible personal property or specified digital products if the sale thereof has already been included in the measure of this tax or the tax imposed by Section 27-65-20 or Section 27-65-17, 27-65-19, 27-65-25 or 27-65-26, or has already been included in the measure of a sales tax imposed by another state in which the property or products were sold or use tax imposed by some other state in which the property was used. If the rate of sales or use tax paid another state by the person using the property or products in Mississippi is not equal to or greater than the rate imposed by this article, then the user or purchaser shall apply the difference in these rates to the purchase price or value of the property or products and pay to the commissioner the amount of tax thus computed. Persons using business property or products in this state which has been used by them in other states shall be entitled to a credit for sales and/or use tax paid to other states equal to the aggregate of all such state rates multiplied by the value of the property or products at the time of importation into this state. Persons using business property or products in this state which were acquired from another person who used it in other states shall be entitled to a credit equal to the applicable rate in the state of last prior use multiplied by the value of the property or products at the time of importation into this state. However, credit for use tax paid to another state shall not apply on the purchase price of tangible personal property or specified digital products that have been only stored or warehoused in the other state and the first use of the property or products occurs in Mississippi. Provided further, that credit for sales or use tax paid to another state shall not apply on the purchase price or value of automobiles, trucks, truck-tractors, semitrailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles imported and first used in Mississippi.

Credit for sales or use tax paid to another state as provided in this paragraph (a) shall be evidenced by an invoice clearly and correctly showing the amount of the tax as a separate item, and no credit shall be allowed otherwise.

(b) On the use, storage or consumption of tangible personal property or specified digital products to the extent that sales of similar property or products in Mississippi are either excluded or specifically exempt from sales tax or are taxed at the wholesale rate.

This exemption shall be confined to the use of property or products the sale of which is an itemized exemption in the Mississippi Sales Tax Law, or to use by persons who are listed in the Mississippi Sales Tax Law as being exempt from sales tax.

(c) On the use, storage or consumption of tangible personal property or specified digital products brought into this state by a nonresident for his or her use or enjoyment while temporarily within the state, but not including tangible personal property or specified digital products brought in for use in connection with a business activity. This exemption shall not apply to property or products which remain situated in this state for the repeated use, storage or consumption by out-of-state visitors, or which is acquired by visitors and first used in this state.

(d) On the use of a motor vehicle for which a registration is required by the motor vehicle law, when such motor vehicle was purchased by a natural person for his personal or family use while such person was a bona fide resident of another state and who thereafter became a resident of this state, but not to include a motor vehicle which is transferred by the owner for commercial use or for use by another person within this state.

(e) On the use of personal and household effects by a natural person acquired while the person was a bona fide resident of another state, and who thereafter became a resident of this state.

(f) On the use or rental of motion picture film, video-audio tapes , phonograph records or specified digital products for exhibition either by a person paying Mississippi sales tax on gross income from admissions for the exhibitions or by a person operating a television or radio broadcasting station.

(g) On any vehicle purchased in another state for use outside of this state by a Mississippi citizen serving in the Armed Forces and stationed in another state who elects to license the vehicle in Mississippi.

(h) On the cost or value and on the use, storage and consumption of rail rolling stock and component parts thereof.

(i) On the use, storage or consumption of literature, video tapes , photographic slides or specified digital products used by religious institutions for the propagation of their creeds or for carrying on their customary nonprofit religious activities, and on the use of any tangible personal property or specified digital products purchased and first used in another state by religious institutions for the propagation of their creeds or for carrying on their customary nonprofit religious activities. “Religious institution,” for the purpose of this exemption, means any religious institution granted an exemption under 26 USCS Section 501(c)(3). Any exemption under this paragraph obtained by fraud, misstatement or misrepresentation shall be cancelled by the State Tax Commission, and the person committing the fraud, misstatement or misrepresentation shall be liable for prosecution for fraud on the assessment, and, on conviction, shall be fined not less than One Thousand Dollars ($1,000.00), or punished by imprisonment in the State Penitentiary for a term not to exceed five (5) years, or both, within the discretion of the court.

(j) The tax on the cost or value of farm machinery used in the harvesting of agricultural products shall be limited to the ratio of use within this state to the life of the property.

(k) [Repealed].

(*l*) On the use of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; or repair services thereon; by a taxpayer other than the manufacturer when the manufacturer still holds title to the items and the items are purchased by the manufacturer as a part of a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi) or Section 57-75-5(f)(xxii).

(m) On the use, storage or consumption of utilities purchased by a manufacturer described in Section 27-65-101(x).

(n) On the use, storage or consumption of utilities purchased by an enterprise described in Section 27-65-101(cc).

(o) On the use, storage or consumption of jet aircraft engines that are temporarily located within the State of Mississippi and are brought into the state for research and/or testing purposes at a jet aircraft engine research and testing facility.

SOURCES: Codes, 1942, § 10146-04; Laws, 1955, Ex. Sess. ch. 111, § 4; Laws, 1958, ch. 492; Laws, 1960, ch. 479, § 4; Laws, 1965, Ex. Sess. ch. 22, § 5; Laws, 1966, ch. 655, § 2; Laws, 1968, ch. 588, § 13; Laws, 1980, ch. 536, § 4; Laws, 1989, ch. 531, § 1; Laws, 1990, 1st Ex Sess, ch. 71, § 23; Laws, 1991, ch. 388, § 1; Laws, 1992, ch. 497, § 18; Laws, 1994, ch. 510, § 2; Laws, 2000, 3rd Ex Sess, ch. 1, § 15; Laws, 2001, ch. 323, § 1; Laws, 2005, ch. 315, § 5; Laws, 2006, ch. 477, § 1; Laws, 2007, ch. 303, § 16; Laws, 2007, 1st Ex Sess, ch. 1, § 13 eff from and after passage (approved May 11, 2007); Laws, 2009, ch. 332, § 8, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (a). The reference to "Section 27-65-24" was changed to "Section 27-65-20." Section 27-65-24 was deleted from the Code because it was a duplicate of Section 27-65-20, with the same source. The Joint Committee ratified this correction at its August 5, 2008, meeting.

Editor's Note — Subsection (k), which exempted the use, storage or consumption, between July 1, 1993, and June 30, 1994, of machinery and equipment to corporations qualified as tax-exempt organizations under Section 501(c)(4) and established in response to the Federal Oil Pollution Act of 1990 to provide a private capability to respond to major oil spills from taxation, was repealed by its own terms, effective July 1, 1995.

Cross References — Motor vehicle privilege taxes, see § 27-19-1 et seq.

Applicability of exemptions to motor vehicle privilege tax, see § 27-19-149.

Interstate commercial carriers motor fuel tax in lieu of use tax, see §§ 27-61-5, 27-61-11.

Mississippi Sales Tax Law, see § 27-65-1 et seq.

"Specified digital products" defined, see § 27-65-26.

Tax levied in this Article not to be collected on use, storage or consumption of boxes, crates, cartons and other packaging material brought into state for use to pack or ship materials for federal government, see § 27-67-6.

Exemption from use tax of certain property used by religious institutions applied retroactively, see § 27-67-8.

Federal Aspects — Organizations exempt from federal income taxation, see 26 U.S.C.S. § 501.

Oil Pollution Act of 1990 generally, see 33 USCS § 2701 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. No entitlement to exemption.
3. Judicial review.
4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Taxpayer's purchase of a boat in Florida was not subject to Mississippi use tax because (1) the Mississippi Department of Revenue showed no taxing authority, (2) the status of the purchase as a sale did not, alone, subject the purchase to a tax, (3) the taxpayer's use of a broker did not, alone, exclude the purchase as a casual sale, nor the fact the purchase was nontaxable in Florida, and (4) the boat was not sold in the ordinary course of the broker's business, as the broker only sold marketing services. Castigliola v. Miss. Dep't of Revenue, 162 So. 3d 795 (Miss. 2015).

The imposition of use and excise taxes pursuant to § 27-67-7 et seq. on a pipeline company's use of natural gas taken from its interstate gas pipeline as fuel for its compressor engines located along the pipeline was permissible under the commerce clause and the due process clause of the United States Constitution since the activity taxed-the consumption of natural gas in compressor stations located in Mississippi-had a sufficient nexus with the State to justify the tax, the tax was fairly apportioned to assess only local activities and did not discriminate against interstate commerce by subjecting interstate taxpayers to a double taxation where similarly situated intrastate taxpayers would be subject to only single taxation, and the tax was fairly related to the benefits provided by the State to the pipeline company. Tennessee Gas Pipeline Co. v. Marx, 594 So. 2d 615 (Miss. 1992).

State's imposition of sales and use tax liability on religious organization's retail sale of religious materials, did not, under extant circumstances, violate free exercise of religion clause of First Amendment or result in excessive entanglement between government and religion thereby violating establishment clause. Jimmy Swaggart Ministries v. Board of Equalization, 493 U.S. 378, 110 S. Ct. 688, 107 L. Ed. 2d 796 (1990).

The phrase "a sales tax imposed in another state" as set forth in § 27-67-7, means a tax properly imposed. Thus, the Chancery Court properly considered whether another state improperly imposed its sales tax in determining whether a use tax should have been collected. Weeks Dredging & Contracting, Inc. v. Mississippi State Tax Comm'n, 521 So. 2d 884 (Miss. 1988).

Section 514 of the Soldiers' and Sailors' Civil Relief Act does not exempt servicemen from sales and use taxes imposed by states in which they are stationed, but of which they are neither residents nor domiciliaries. Sullivan v. United States, 395 U.S. 169, 89 S. Ct. 1648, 23 L. Ed. 2d 182 (1969).

A pipeline company is not subject to the use tax in respect of gas which, by agreement with the owner of gas transported, it has a right to take from its line for the operation of compressor stations. Mississippi State Tax Commission v. Columbia Gulf Transmission Co., 249 Miss. 88, 161 So. 2d 173 (1964).

2. No entitlement to exemption.

Gas company's use of its own gas for its operations was subject to the use tax and not exempt under Miss. Code Ann. § 27-67-7 because the gas used at the company's plant was never sold at wholesale for resale by another company, but instead the company treated the transaction as a sale to itself and used the gas to fuel its own operations; thus, the company could not avail itself of the wholesaler exemption. Pursue Energy Corp. v. Miss. State Tax Comm'n, 968 So. 2d 368 (Miss. 2007).

3. Judicial review.

In a taxation dispute, a chancellor erred by vacating a decision from the Mississippi Department of Revenue (MDOR) that an airplane dealership had to pay a use tax, which was the same as the sales-tax rate, where substantial documentary evidence supported the conclusions that the dealership had been using for charters the airplanes that it was trying to sell. This determination was outside of the chancery court's appellate purview, which was limited to deciding if the MDOR's decision was supported by substantial evidence or was arbitrary and capricious. Miss. Dep't of Revenue v. Johnny Reb Aviation, LLC, 167 So. 3d 1266 (Miss. Ct. App. 2014), writ of certiorari denied en banc by 168 So. 3d 962, 2015 Miss. LEXIS 356 (Miss. July 2, 2015).

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Tangible personal property used in the construction and operation of an oil pipeline gathering system for transporting oil from one point in the state to another point in the state for ultimate shipment out of the state by railroad, was exempt from use tax, as property used in furtherance of interstate transportation or interstate commerce. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

Materials and other supplies used in constructing a telephone system adjacent to, and used solely in connection with the operation of an interstate trunk pipeline were exempt from use tax as property used in the furtherance of interstate transportation or interstate commerce. Interstate Oil Pipe Line Co. v. Stone, 203 Miss. 715, 35 So. 2d 73 (1948), error overruled, 203 Miss. 739, 36 So. 2d 142 (1948), aff'd, 337 U.S. 662, 69 S. Ct. 1264, 93 L. Ed. 1613 (1949), reh'g denied, 338 U.S. 839, 70 S. Ct. 32, 94 L. Ed. 513 (1949).

RESEARCH REFERENCES

ALR. Items or materials exempt from use tax as used in manufacturing, processing, or the like. 30 A.L.R.2d 1439.

Validity of use tax exemption having no complementary exemption under sales tax. 85 A.L.R.2d 1043.

Exemption of religious organization from sales or use tax. 54 A.L.R.3d 1204.

Validity and construction of provisions allowing use tax credit for tax paid in other state. 31 A.L.R.4th 1206.

Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax--post-complete auto transit cases. 71 A.L.R.5th 671.

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes § 200.

CJS. 53 C.J.S., Licenses § 51.

85 C.J.S., Taxation §§ 2167, 2173-2174.

Lawyers' Edition. State tax or fee imposed for motor carrier's use of highways as violating commerce clause (Article 1, § 8, clause 3) of Federal Constitution — Supreme Court cases. 97 L. Ed. 2d 843.

Tax legislation as violating Federal Constitution's First Amendment — Supreme Court cases. 103 L. Ed. 2d 951.

§ 27-67-8. Examination of records of religious institution; retroactive application of exemption from use tax on certain property used by religious institutions.

(1) No examination shall be made of the records of a religious institution, as defined in paragraph (i) of Section 27-67-7, unless the commissioner shows by reasonable evidence that the religious institution is not operating on a nonprofit basis.

(2) All outstanding claims against a religious institution as defined in paragraph (j) of Section 27-67-7 for unpaid taxes having accrued under the sales or use tax laws on or before the effective date of Section 27-67-7 and this section based upon transactions by such religious institution shall be void and in regards to such transactions for which sales or use taxes are unpaid on or before July 1, 1989, Sections 27-67-7 and 27-67-8 shall be retroactive in effect.

SOURCES: Laws, 1989, ch. 531, § 2, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference. The reference in (1) to "paragraph (j)" was changed to "paragraph (i)." The Joint Committee ratified this correction at its August 5, 2008, meeting.

JUDICIAL DECISIONS

1. Constitutionality.

State's imposition of sales and use tax liability on religious organization's retail sale of religious materials, did not, under extant circumstances, violate free exercise of religion clause of First Amendment or result in excessive entanglement between government and religion thereby violating establishment clause. Jimmy Swaggart Ministries v. Board of Equalization, 493 U.S. 378, 110 S. Ct. 688, 107 L. Ed. 2d 796 (1990).

RESEARCH REFERENCES

ALR. Exemption of charitable or educational organization from sales or use tax. 53 A.L.R.3d 748.

Exemption of religious organization from sales or use tax. 54 A.L.R.3d 1204.

State or local sales, use, or privilege tax on sales of, or revenues from sales of, advertising space or services. 40 A.L.R.4th 1114.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3). 134 A.L.R. Fed 395.

CJS. 85 C.J.S., Taxation §§ 2182, 2189, 2191-2193.

Lawyers' Edition. Tax legislation as violating Federal Constitution's First Amendment — Supreme Court cases. 103 L. Ed. 2d 951.

Establishment and free exercise of religion clauses of Federal Constitution's First Amendment as applied to public aid to sectarian schools or students at such schools—Supreme Court cases. 125 L. Ed. 2d 793.

§ 27-67-9. Registration of seller.

Every person selling tangible personal property or specified digital products for use, storage or consumption, or rendering services in this state to consumers, shall register and furnish any information relating to his business activities as the commissioner may require.

SOURCES: Codes, 1942, § 10146-05; Laws, 1955, Ex. Sess. ch. 111, § 5; Laws, 1960, ch. 479, § 5, eff June 1, 1960; Laws, 2009, ch. 332, § 9, eff from and after July 1, 2009.

Cross References — "Specified digital products" defined, see § 27-65-26.

§ 27-67-11. Seller to collect tax from purchaser.

(1) Every person maintaining a place of business, or doing business, in this state, shall collect the tax imposed by this article from the purchaser and remit the tax to the commissioner as hereinafter provided. Failure to collect the tax from the purchaser shall not relieve the seller of liability for payment of the tax.

(2) Any person selling tangible personal property or specified digital products that does not maintain a place of business in this state may be authorized by the commissioner to collect the tax from customers in Mississippi who are liable for its payment, and such person shall remit the tax to the commissioner in the same manner and subject to the same requirements as a person maintaining a place of business or doing business within this state. Such authority may be cancelled at any time when, in the judgment of the commissioner, the tax can be collected more effectively from the purchaser in this state. When the tax has been collected from the purchaser, the seller shall be liable for payment of the tax to the commissioner.

(3) Every person required or authorized to collect the tax shall add to the sales price of tangible personal property, services or specified digital products the amount of the tax imposed on purchaser for the use, storage, or consumption thereof, and, when so added, the tax shall be a debt from the purchaser to the seller until paid, and shall be collectible at law in the same manner as other debts. It shall be unlawful for any person to advertise, hold out, or state to the public or to any customer that the tax herein imposed will be assumed or absorbed by the seller or that any part thereof will be refunded. Said tax shall be stated separately from the sales price on the sales invoice and shown separately on the seller's records. The purchaser shall pay the tax to the seller as trustee for and on account of the state.

SOURCES: Codes, 1942, § 10146-06; Laws, 1955, Ex. Sess. ch. 111, § 6; Laws, 1960, ch. 479, § 6, eff June 1, 1960; Laws, 2009, ch. 332, § 10, eff from and after July 1, 2009.

Cross References — Out-of-state audit of books to determine tax liability, see §§ 27-3-63, 27-3-65.

"Specified digital products" defined, see § 27-65-26.

Collection of sales tax, see § 27-65-31.

Compensation or discount to taxpayer for collecting tax and filing returns, see § 27-65-33.

Relief of seller from obligation to collect use taxes from manufacturers and utilities holding special permits, see § 27-67-15.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former Law.
6. Under former law.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former law.

Use Tax Law, Chapter 120, Laws of 1942, is unconstitutional as to its requirement that a nonresident seller shall collect and pay tax on sales consummated in Tennessee by delivery of property to a common carrier for transportation to purchasers in Mississippi, when the nonresident seller is not doing business in Mississippi and property was sold on orders taken by nonresident salesmen, as it violated commerce clause by imposing a burden on interstate commerce and denies to seller equal protection and due process of law. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

A seller of tangible personal property who has no office, place of business or resident agent in this state, has not qualified to do business in Mississippi under state law, has not appointed a resident agent for service of process, and is engaged in no local activity in state, but who sells on orders taken by nonresident salesmen, completing such sales in Tennessee by delivery of property sold to residents of Mississippi to a common carrier at Memphis for transportation to purchasers in Mississippi, is not doing business in Mississippi, in a manner to give its courts jurisdiction over seller. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

Nonresident seller engaged exclusively in interstate commerce is neither subject to state's taxing power nor to state's jurisdiction to subject seller to personal liability for failure to collect and pay tax levied against citizens of this state. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 224, 240 et seq.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

CJS. 53 C.J.S., Licenses §§ 84-86.

85 C.J.S., Taxation §§ 2181, 2213-2215.

§ 27-67-13. Liability of user.

Any person who uses, stores, or consumes any tangible personal property or specified digital products upon which a tax is herein imposed, or who has received a service which is taxable, upon which the tax has not been paid to the commissioner or to a seller authorized by the commissioner to collect the tax, shall be liable therefor, and shall file returns and pay the tax due the state to the commissioner as provided by this article.

SOURCES: Codes, 1942, § 10146-07; Laws, 1955, Ex. Sess. ch. 111, § 7; Laws, 1960, ch. 479, § 7, eff June 1, 1960; Laws, 2009, ch. 332, § 11, eff from and after July 1, 2009.

Cross References — Action to recover tax, penalty and interest, see § 27-35-5. "Specified digital products" defined, see § 27-65-26.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

State has right to assess a use tax against its residents for use within state of property which has been transported to them in interstate commerce. Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes §§ 224, 240 et seq.

CJS. 53 C.J.S., Licenses §§ 78, 79.

§ 27-67-15. Issuance of permits.

The commissioner may provide for the issuance of permits to manufacturers or public service corporations to pay all taxes levied under this article on the purchase of tangible personal property, services and specified digital products directly to the commissioner, in lieu of payment of the use tax to the vendor, in instances where the commissioner determines that such provisions will facilitate and expedite the collection of the tax at the proper rates which may be due on such purchases by said persons.

SOURCES: Codes, 1942, § 10146-08; Laws, 1955, Ex. Sess. ch. 111, § 8; Laws, 2009, ch. 332, § 12, eff from and after July 1, 2009.

Cross References — "Specified digital products" defined, see § 27-65-26. Issuance of permits under sales tax law, see § 27-65-27.

§ 27-67-17. Payment of tax to commissioner, filing of returns.

(1) Except as otherwise provided in this section, the commissioner shall collect the tax imposed by this article, and every person subject to its provisions shall remit to the commissioner, on or before the twentieth day of each month, the amount of tax due by such person for the preceding calendar month. Returns and payments placed in the mail must be postmarked by the due date in order to be timely filed, except that when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed. Every taxpayer shall file a return with his remittance, which return shall be prescribed by the commissioner and shall show

for the calendar month preceding the tax payment date, the total sale or purchase price, or value of tangible personal property or specified digital products sold, used, stored or consumed by him for benefit received or service performed, and such other information as the commissioner may deem pertinent and necessary for determining the amount of tax due thereunder.

(2) The commissioner, in his discretion, may authorize in writing the filing of returns and the payment of tax on a quarterly basis by any person required or authorized to pay the tax imposed, such authority to be subject to revocation for good cause by the commissioner.

(3) In instances where it is impractical to file returns and pay the tax monthly or quarterly, the commissioner may authorize the filing of semiannual or annual returns.

(4) A taxpayer required to collect use taxes under this article and having an average monthly use tax liability of at least Fifty Thousand Dollars ($50,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2014, and on or before the twenty-fifth day of June of each succeeding year thereafter, an amount equal to at least seventy-five percent (75%) of such taxpayer's estimated use tax liability for the month of June of the current calendar year, or an amount equal to at least seventy-five percent (75%) of the taxpayer's use tax liability for the month of June of the preceding calendar year. Payments required to be made under this subsection must be received by the Department of Revenue no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this subsection and the taxpayer's actual use tax liability for the month of June for which the estimated payment was required to be made. Payments made by a taxpayer under this subsection shall not be considered to be collected for the purposes of any use tax diversions required by law until the taxpayer files a return for the actual use taxes collected during the month of June. This subsection shall not apply to any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political subdivision of the State of Mississippi, or any agency, department, institution or instrumentality of any political subdivision of the State of Mississippi.

(5) The commissioner, in his discretion, may authorize the computation of the tax on the basis of a formula in lieu of direct accounting of specific properties in instances where such method will expedite, simplify or provide a more equitable means of determining liability under this article. All formulas shall be subject to revocation for good cause by the commissioner.

SOURCES: Codes, 1942, § 10146-09; Laws, 1955, Ex Sess ch. 111, § 9; Laws, 1960, ch. 479, § 8; Laws, 1995, ch. 549, § 3; Laws, 2002, ch. 539, § 3; Laws, 2005, ch. 330, § 3; Laws, 2007, ch. 536, § 3; Laws, 2008, ch. 507, § 11; Laws, 2009, ch. 332, § 13; Laws, 2009, ch. 563, § 9; Laws, 2010, ch. 562, § 9; Laws, 2012, ch. 547, § 5, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 13 of ch. 332, Laws of 2009, effective from and after July 1, 2009 (approved March 12, 2009), amended this section. Section 9 of ch. 563, Laws of 2009, effective from and after July 1, 2010 (approved May 13, 2009), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009 meeting of the Committee.

Editor's Note — Laws of 2007, ch. 536, § 4, as amended by Laws of 2008, ch. 507, § 12, provides:

"SECTION 4. This act shall take effect and be in force from and after July 1, 2009."

Laws of 2008, ch. 507, § 1, effective April 29, 2008, provides:

"SECTION 1. This act shall be known and may be cited as the "Budget Reconciliation Act of 2008."

Cross References — Returns under sales tax law, see § 27-65-33.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation §§ 2144, 2212.

§ 27-67-19. Extension of time; damages.

The commissioner may grant a reasonable extension of time for making any return and paying the tax due thereon, but the time for filing any such return shall not be extended beyond the twentieth of the month next succeeding the regular due date of such return without the imposition of interest at the rate of one percent (1%) per month, or fractional part of a month, from the regular due date of such return until the tax is paid.

For persistent, willful or recurring failure to make any return and pay the tax shown thereby to be due, by the time specified herein, there shall be added to the amount of tax shown to be due, ten percent (10%) damages, or interest at the rate of one percent (1%) per month, or both.

SOURCES: Codes, 1942, § 10146-10; Laws, 1955, Ex. Sess. ch. 111, § 10; ch. 479, § 9; Laws, 1988, ch. 491, § 4, eff from and after July 1, 1988.

Editor's Note — Laws of 1988, ch. 491, § 6, effective July 1, 1988, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the Mississippi Sales and Use Tax Laws prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid statutes and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant thereunder prior to July 1, 1988, or the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

RESEARCH REFERENCES

CJS. CJS. 85 C.J.S., Taxation §§ 2189, 2206, 2212.

§ 27-67-21. Tax constitutes a debt.

The tax imposed by this article or damages assessed or interest applied by authority of this article shall constitute a debt due the State of Mississippi and shall be a lien upon the property or rights to property of any person subject to the provisions of this article from the date of assessment until paid.

SOURCES: Codes, 1942, § 10146-11; Laws, 1955, Ex. Sess. ch. 111, § 11.

Cross References — Action to recover tax, penalty and interest, see § 27-35-5.
Sales tax as debt, see § 27-65-41.

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sales and Use Taxes § 224, 240 et seq.

CJS. 53 C.J.S., Licenses §§ 84-86.
85 C.J.S., Taxation § 2216.

§§ 27-67-23 through 27-67-27. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

§ 27-67-23. [Codes, 1942, § 10146-12; Laws, 1955, Ex. Sess. ch. 111, § 12; Laws, 1980, ch. 536, § 5; Laws, 1988, ch. 491, § 5, eff from and after July 1, 1988.]

§ 27-67-25. [Codes, 1942, § 10146-12; Laws, 1955, Ex. Sess. ch. 111, § 12.]

§ 27-67-27. [Codes, 1942, § 10146-12; Laws, 1955, Ex. Sess. ch. 111, § 12.]

Editor's Note — Former § 27-67-23 was entitled: "Rights of taxpayer."

Former § 27-67-25 was entitled: "Recovery of improper taxes."

Former § 27-65-27 was entitled: "Only person burdened with illegal tax entitled to relief."

Laws of 2005, ch. 499, § 38, effective July 1, 2005, provides as follows:

"SECTION 38. Sections 1 through 10 of this act shall be codified as a separate chapter in Title 27, Mississippi Code of 1972."

§ 27-67-29. Disbursement from treasury to taxpayer.

In the event a final judgment is rendered in favor of the taxpayer in a suit to recover illegal taxes, it shall be the duty of the state auditor, upon receipt of a certified copy of the final judgment, to issue a warrant directed to the state treasurer, in favor of the taxpayer, to pay the part of the illegal tax as was paid into the State Treasury.

SOURCES: Codes, 1942, § 10146-12; Laws, 1955, Ex. Sess. ch. 111, § 12.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 27-67-31. Administration of article by commissioner; monthly distribution of funds.

All administrative provisions of the sales tax law, and amendments thereto, including those which fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon a taxpayer, shall apply to all persons liable for use taxes under the provisions of this article. The commissioner shall exercise all power and authority and perform all duties with respect to taxpayers under this article as are provided in said sales tax law, except where there is conflict, then the provisions of this article shall control.

The commissioner may require transportation companies to permit the examination of waybills, freight bills, or other documents covering shipments of tangible personal property into this state.

On or before the fifteenth day of each month, the amount received from taxes, damages and interest under the provisions of this article during the preceding month shall be paid and distributed as follows:

(a) On or before July 15, 1994, through July 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited in the School Ad Valorem Tax Reduction Fund created pursuant to Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total use tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Four Million Dollars ($4,000,000.00). Thereafter, the amounts diverted under this paragraph (a) during the fiscal year in excess of Four Million Dollars ($4,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(b) On or before July 15, 1994, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the Education Enhancement Fund created pursuant to Section 37-61-33.

(c) On or before July 15, 1997, and on or before the fifteenth day of each succeeding month thereafter, the revenue collected under the provisions of this article imposed and levied as a result of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section 27-51-105.

(d) On or before July 15, 1997, and on or before the fifteenth day of each succeeding month thereafter and after the deposits required by paragraphs (a) and (b) of this section are made, the remaining revenue collected under the provisions of this article imposed and levied as a result of Section 27-65-17(1) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section 27-51-105.

(e) The remainder of the amount received from taxes, damages and interest under the provisions of this article shall be paid into the General Fund of the State Treasury by the commissioner.

SOURCES: Codes, 1942, § 10146-13; Laws, 1955, Ex Sess ch. 111, § 13; Laws, 1960, ch. 479, § 10; Laws, 1994, ch. 456, § 1; Laws, 1997, ch. 566, § 2; Laws, 1997, ch. 612, § 27; Laws, 2000, ch. 617, § 2, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of the first paragraph. The words "requirements and duties imposed upon taxpayer" were changed to "requirements and duties imposed upon a taxpayer." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Section 2 of ch. 566, Laws of 1997, amended this section, effective July 1, 1997. Section 27 of ch. 612, Laws of 1997, effective July 1, 2002, also amended this section. As set out above, the first version, effective July 1, 1997, of this section reflects the language of Section 2 of ch. 566, Laws of 1997, and the second version, effective July 1, 2002, reflects the language of Section 27 of ch. 612, Laws of 1997.

Editor's Note — Laws of 1997, ch. 612, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st 1997 Extraordinary Session of the Legislature on April 23, 1997.

Cross References — Out-of-state audit of books to determine tax liability, see §§ 27-3-63, 27-3-65.

Applicability of administrative provisions to nonpayment of motor vehicle privilege taxes, see § 27-19-151.

Distribution of sales taxes and other revenue collected under Chapter 65 of Title 27, see §§ 27-65-75.

Administration of sales tax law, see § 27-65-87.

§ 27-67-32. Repealed.

Repealed by Laws of 1994, ch. 456, § 2, effective from and after July 1, 1994.

[Laws, 1992, ch. 419, § 11]

Editor's Note — Former § 27-67-32 was entitled: Disbursements to school ad valorem tax reduction fund and education enhancement fund. For similar provisions, see § 27-67-31.

§ 27-67-33. Prior claims not affected.

Nothing in this article shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes, due or accrued under Chapter 119, Laws of 1934, Chapter 516, Laws of 1950, Chapter 409, Laws of 1952, or Chapter 111, Laws of 1955, as amended, prior to August 1, 1968, whether such assessment, appeal, suit, claim or action shall have been begun before August 1, 1968, or shall thereafter be begun; and the provisions of Chapter 119, Laws of 1934, Chapter 516, Laws of 1950, Chapter 409, Laws of 1952, and Chapter 111, Laws of 1955, are expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due or accrued under any such law, and amendments thereto, prior to August 1, 1968, and for the imposition of any penalties, forfeitures or claims for a failure to comply therewith.

SOURCES: Codes, 1942, § 10146-15; Laws, 1955, Ex. Sess. ch. 111, § 15; Laws, 1956, ch. 422, § 3; Laws, 1960, ch. 479, § 11; Laws, 1965, Ex. Sess. ch. 22, § 6; Laws, 1966, ch. 655, § 4; Laws, 1968, ch. 588, § 16, eff from and after August 1, 1968.

§ 27-67-35. Repealed.

Repealed by Laws of 1997, ch. 566, § 3, effective from and after July 1, 1997.

[Laws, 1994, ch. 563, § 5]

Editor's Note — Former § 27-67-35 provided for certain disbursements to the Motor Vehicle Ad Valorem Tax Reduction Fund.

ARTICLE 3.

WHOLESALE COMPENSATING TAX [REPEALED].

§§ 27-67-301 through 27-67-319. Repealed.

Repealed by Laws of 1984, ch. 458, § 8, effective from and after July 1, 1984.

[Codes, 1942, §§ 10147-01 to 10147-09, 10147-11; Laws, 1955, Ex. Sess. ch. 110, §§ 1-9; Laws, 1958, ch. 577, §§ 1-7; Laws, 1964, ch. 534, §§ 1-3, 5; Laws, 1966, ch. 650, § 2]

Editor's Note — Former §§ 27-67-301 through 27-67-319 contained provisions relating to a "wholesale compensating tax".

ARTICLE 5.

SALESMEN'S TAX.

SEC.
27-67-501. Title and purpose of article.
27-67-503. Definitions.
27-67-505. Tax levy.
27-67-507. Exemptions.
27-67-509. Collection of tax; returns.
27-67-511. Administration of the article.

§ 27-67-501. Title and purpose of article.

This article may be cited as the salesman's tax law.

The primary purpose of the article is to equalize the requirements of the laws of this state with regard to all persons soliciting sales of tangible personal property within this state and to protect those persons collecting and remitting the Mississippi sales tax, use tax and wholesale compensating tax from the unfair competition of persons who are not collecting and remitting such taxes to this state while enjoying the protection of the laws of this state, the use of its highways and all other benefits provided by the laws of this state.

SOURCES: Codes, 1942, § 10148-01; Laws, 1956, ch. 411, § 1; Laws, 1958, ch. 580, § 1, eff from and after passage (approved March 17, 1958).

Editor's Note — The wholesale compensating tax, referred to in this section and codified as former §§ 27-67-301 through 27-67-319, was repealed by Laws of 1984, ch. 458, § 8, effective from and after July 1, 1984.

Cross References — Sales tax law, see § 27-65-1 et seq.

Use tax law, see § 27-67-1 et seq.

§ 27-67-503. Definitions.

Whenever used in this article, the following words and terms shall have the definition and meaning herein prescribed unless the intention of giving a more limited meaning is disclosed by the context:

(a) "Tax commission" or "department" shall mean the Department of Revenue of the State of Mississippi.

(b) "Commissioner" shall mean the Commissioner of Revenue of the Department of Revenue.

(c) "Person" shall include a natural person, firm, corporation, copartnership, joint venture, association, estate or any other group or combination acting as a unit and the plural as well as the singular thereof.

(d) "Taxpayer" shall mean any person liable for the tax hereunder.

(e) "Sale" or "purchase" shall include the barter or exchange of properties as well as the sale or purchase thereof for money, and every closed transaction by which the title to tangible property passes, either within or without this state, shall constitute a taxable event, whether compensation shall be money or service or some other thing of value.

(f) "Purchase price" or "sales price" shall mean the total amount for which tangible personal property is purchased or sold, valued in money, whether paid in money or merchandise; provided that cash discounts allowed and taken shall not be included.

(g) "Tangible personal property" shall mean tangible goods, wares and merchandise when sold, purchased or delivered within this state.

(h) "Salesman" or "salesmen" shall mean and include any and all persons engaged in the itinerant solicitation and taking of orders for tangible personal property by use of the highways of this state for subsequent delivery to retailers or consumers within this state.

SOURCES: Codes, 1942, § 10148-02; Laws, 1956, ch. 411, § 2; Laws, 1958, ch. 580, § 2; Laws, 2009, ch. 492, § 108, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

§ 27-67-505. Tax levy.

There is hereby levied, assessed and shall be collected from each salesman, as defined herein, a tax of three percent (3%) of the gross amount of the orders taken where delivery is made to a consumer located in this state and when the merchandise is for consumption by the said customer.

Provided, however, that, in the case of the solicitation or taking of orders for merchandise from retailers for resale in the regular course of business, the tax shall be paid at the rate of one eighth of one percent (⅛ of 1%) of the total amount of such orders.

SOURCES: Codes, 1942, § 10148-03; Laws, 1956, ch. 411, § 3.

Cross References — Levy of sales taxes, see § 27-65-13.

Levy of use taxes, see § 27-67-5.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation §§ 2170, 2186-2189, 2191-2193.

§ 27-67-507. Exemptions.

The tax levied by this article shall not be collected in the following instances:

(a) A salesman taking orders for and to be filled by persons paying the tax due under the provisions of the sales, use or wholesale compensating tax laws of this state on the sales made pursuant to said orders.

(b) A salesman taking orders for merchandise to be delivered to wholesalers or manufacturers to the extent of these orders.

(c) A salesman taking an occasional order for merchandise in this state without having a daily or weekly itinerary in the state.

(d) Any amount representing a sale to an exempt person or an exempt commodity as provided in the sales tax law.

SOURCES: Codes, 1942, § 10148-04; Laws, 1956, ch. 411, § 4.

Editor's Note — The wholesale compensating tax, referred to in this section and codified as former §§ 27-67-301 through 27-67-319, was repealed by Laws of 1984, ch. 458, § 8, effective from and after July 1, 1984.

Cross References — Sales taxes, see §§ 27-65-13 through 27-65-25.

Use tax, see § 27-67-5.

§ 27-67-509. Collection of tax; returns.

The commissioner shall collect the tax imposed by this article and every person subject to its provisions shall remit to the commissioner on or before the twentieth day of each month the amount of the tax due by such person for the preceding calendar month. Every taxpayer shall file a return with his remittance, which return shall be processed by the commissioner and shall show, for the calendar month preceding the tax payment date, the total sale or purchase price of the tangible personal property sold by him, and such other information as the commissioner may deem pertinent or necessary for determining the amount of the tax due hereunder.

SOURCES: Codes, 1942, § 10148-05; Laws, 1956, ch. 411, § 5.

Cross References — Collection of sales tax, see § 27-65-31.

Returns under sales tax law, see § 27-65-33.

Levy and collection of use taxes, see §§ 27-67-5 through 27-67-7.

Payment of use taxes and filing of returns, see § 27-67-17.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2212.

§ 27-67-511. Administration of the article.

All administrative provisions of the Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of said Sales Tax Law, and all other requirements and duties imposed upon the taxpayer, shall apply to all persons liable for taxes under the provisions of this article, and the commissioner shall exercise all power and authority and perform all the duties with respect to taxpayers under this article as are provided in said Sales Tax Law, except where there is conflict, then the provisions of this article shall control. Any damages, penalties, or interest collected by the commissioner for nonpayment of taxes, or for noncompliance with the provisions of this article, shall be paid into the general fund of the state treasury by the commissioner. The commissioner may, from time to time, make such rules and regulations, not inconsistent with this article, as may be deemed necessary to carry out its provisions and such rules and regulations shall have the full force and effect of law.

The administration of this article is vested in and shall be exercised by the chairman of the State Tax Commission, and the enforcement of any of the provisions of this article in any of the courts of this state shall be under the exclusive jurisdiction of the chairman of the State Tax Commission, who shall from time to time promulgate such rules and regulations, not inconsistent with this article, as he may deem necessary to enforce its provisions.

SOURCES: Codes, 1942, § 10148-06; Laws, 1956, ch. 411, § 6.

Cross References — Administration of sales tax law, see § 27-65-87.
Administration of use tax law, see § 27-67-31.

CHAPTER 68

Uniform Sales and Use Tax Administration Law

Sec.

27-68-1. Short title.
27-68-3. Definitions.
27-68-5. Legislative findings.
27-68-7. Authority of State Tax Commission to enter into Streamlined Sales and Use Tax Agreement with one or more states; implementation.
27-68-9. No provision of agreement to invalidate or amend law of Mississippi; adoption of agreement by state does not amend or modify existing law; implementation of agreement conditions must be by action of the state.
27-68-11. Agreement to meet minimum requirements prior to being entered into by State Tax Commission.
27-68-13. Agreement to provide mechanism among member states for establishing and maintaining cooperative system for administration of sales and use taxes.
27-68-15. Member states to be sole beneficiaries of agreement; no private right of action; no law declared invalid because of inconsistency with agreement.
27-68-17. Certified Service Provider; Certified Automated System; seller with proprietary system for determining amount of tax due liable for failure of system to meet performance standard.

§ 27-68-1. Short title.

This chapter shall be known as and referred to as the "Uniform Sales and Use Tax Administration Act."

SOURCES: Laws, 2003, ch. 338, § 1, eff from and after passage (approved Mar. 7, 2003.)

Cross References — Sales taxes, generally, see § 27-65-1 et seq.
Use taxes, generally, see § 27-67-1 et seq.
Comparable Laws from other States — Arkansas: A.C.A. § 26-20-101 et seq.
Georgia: O.C.G.A. § 48-8-160 et seq.
Iowa: Iowa Code § 423.7 et seq.
Kentucky: KRS § 139.780 et seq.
Louisiana: La. R.S. § 47:335.1 et seq.
Maine: 36 M.R.S. § 7121 et seq.
Minnesota: Minn. Stat. § 297A.995.
New Jersey: N.J. Stat. §§ 54:32B-44 to 54:32B-55.
North Carolina: N.C. Gen. Stat. § 105-164.42A et seq.
Rhode Island: R.I. Gen. Laws § 44-59-1 et seq.
South Dakota: S.D. Codified Laws § 10-45C-1 et seq.
Wisconsin: Wis. Stat. §§ 77.65 to 77.67.
Wyoming: Wyo. Stat. § 39-15-401 et seq.

§ 27-68-3. Definitions.

As used in this chapter:

(a) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(b) "Certified Automated System" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(c) "Certified Service Provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(d) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(e) "Sales tax" means the tax levied under Chapter 65, Title 27, Mississippi Code of 1972.

(f) "Seller" means any person making sales, leases, or rentals of personal property or services.

(g) "State" means any state of the United States and the District of Columbia.

(h) "State Tax Commission" or "department" means the Department of Revenue.

(i) "Use tax" means the tax levied under Chapter 67, Title 27, Mississippi Code of 1972.

SOURCES: Laws, 2003, ch. 338, § 2; Laws, 2009, ch. 492, § 109, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

§ 27-68-5. Legislative findings.

The Legislature finds that this state may enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

SOURCES: Laws, 2003, ch. 338, § 3, eff from and after passage (approved Mar. 7, 2003.)

Cross References — Seller to collect sales tax, see § 27-65-31.
Seller to collect use taxes, see § 27-67-11.

§ 27-68-7. Authority of State Tax Commission to enter into Streamlined Sales and Use Tax Agreement with one or more states; implementation.

The State Tax Commission is authorized to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the State Tax Commission is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multi-state sellers.

The State Tax Commission is further authorized to take other actions reasonably required to implement the provisions set forth in this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The State Tax Commission, or its designee, is authorized to represent this state before the other states that are signatories to the agreement.

SOURCES: Laws, 2003, ch. 338, § 4, eff from and after passage (approved Mar. 7, 2003.)

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-3-4.

Commissioner of Revenue to administer provisions of Article 1 of Chapter 67, Title 27, see § 27-61-31.

Seller to collect sales tax, see § 27-65-31.

Chairman of State Tax Commission to administer and enforce provisions of Chapter 65, Title 27, see § 27-65-87.

Seller to collect use tax, see § 27-67-11.

§ 27-68-9. No provision of agreement to invalidate or amend law of Mississippi; adoption of agreement by state does not amend or modify existing law; implementation of agreement conditions must be by action of the state.

No provision of the agreement authorized by this chapter in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

SOURCES: Laws, 2003, ch. 338, § 5, eff from and after passage (approved Mar. 7, 2003.)

§ 27-68-11. Agreement to meet minimum requirements prior to being entered into by State Tax Commission.

The State Tax Commission shall not enter into the Streamlined Sales and Use Tax Agreement unless the agreement requires each state to abide by the following requirements:

(a) The agreement must set restrictions to achieve over time more uniform state rates through the following:

(i) Limiting the number of state rates.

(ii) Limiting the application of maximums on the amount of state tax that is due on a transaction.

(iii) Limiting the application of thresholds on the application of state tax.

(b) The agreement must establish uniform standards for the following:

(i) The sourcing of transactions to taxing jurisdictions.

(ii) The administration of exempt sales.

(iii) The allowances a seller can take for bad debts.

(iv) Sales and use tax returns and remittances.

(c) The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

(d) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(f) The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(i) Restricting variances between the state and local tax bases.

(ii) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.

(iii) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

(iv) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(g) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(h) The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(i) The agreement must require each state to adopt a uniform policy for Certified Service Providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(j) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

SOURCES: Laws, 2003, ch. 338, § 6, eff from and after passage (approved Mar. 7, 2003.)

§ 27-68-13. Agreement to provide mechanism among member states for establishing and maintaining cooperative system for administration of sales and use taxes.

The agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

SOURCES: Laws, 2003, ch. 338, § 7, eff from and after passage (approved Mar. 7, 2003.)

§ 27-68-15. Member states to be sole beneficiaries of agreement; no private right of action; no law declared invalid because of inconsistency with agreement.

(1) The agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(2) Consistent with subsection (1) of this section, no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(3) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

SOURCES: Laws, 2003, ch. 338, § 8, eff from and after passage (approved Mar. 7, 2003.)

§ 27-68-17. Certified Service Provider; Certified Automated System; seller with proprietary system for determining amount of tax due liable for failure of system to meet performance standard.

(1) A Certified Service Provider is the agent of a seller, with whom the Certified Service Provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the Certified Service Provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a Certified Service Provider is not liable to the state for sales or use tax due on transactions processed by the Certified Service Provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the Certified Service Provider. A seller is subject to audit for transactions not processed by the Certified Service Provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the Certified Service Provider's system is functioning properly and the extent to which the seller's transactions are being processed by the Certified Service Provider.

(2) A person that provides a Certified Automated System is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the Certified Automated System. A seller that uses a Certified Automated System remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

SOURCES: Laws, 2003, ch. 338, § 9, eff from and after passage (approved Mar. 7, 2003.)

CHAPTER 69

Tobacco Tax

Sec.

27-69-1. Title of chapter.
27-69-3. Definitions.
27-69-5. Permit required, and penalty for failure to secure or renew same.
27-69-7. Permit and privilege taxes required; penalty for violations.
27-69-9. Permit may be revoked and reinstated.
27-69-11. Penalties for operating without a permit.
27-69-13. Applicability of tax.
27-69-15. Stamps.
27-69-17. When distributors not required to affix stamps.
27-69-19. Dealers liable; exception.
27-69-21. Exemptions.
27-69-23. Tax additional.
27-69-25. Unpaid taxes a debt.
27-69-27. Manner and time of affixing stamps; manufacturers and wholesale distributors excepted.
27-69-29. Repealed.
27-69-31. Compensation to dealers.
27-69-33. Segregation of stock for interstate shipment.
27-69-35. Records of dealers.
27-69-37. Preservation of invoices.
27-69-39. Liability of persons, carriers, etc.
27-69-41. Penalties.
27-69-43. Repealed.
27-69-45. Repealed.
27-69-47. Penalty for reuse of stamps.
27-69-49. Refund on damaged goods; how obtained.
27-69-51. Refund for stamps shipped into another state; refund of tax paid on cigarettes in possession of wholesaler ceasing to do business in Mississippi.
27-69-53. Commodities subject to confiscation.
27-69-55. Procedure when goods are confiscated.
27-69-56. Repealed.
27-69-57. Commissioner may compromise confiscation.
27-69-59. Unlawful sale; search and seizure.
27-69-61. Injunction by commissioner.
27-69-63. Damaged stamps.
27-69-65. Commissioner to administer provisions of this chapter.
27-69-67. Peace officers to assist in enforcement.
27-69-69. Municipalities may impose privilege tax upon dealers in cigarettes.
27-69-71. Agents of the commissioner.
27-69-73. Rules and regulations.
27-69-75. Payment into treasury.
27-69-77. Records of commissioner.
27-69-79. Nonresident tobacco dealers; state reciprocity as to requirements for doing business.

§ 27-69-1. Title of chapter.

This chapter may be cited as The Tobacco Tax Law.

SOURCES: Codes, 1942, § 10168; Laws, 1934, ch. 125.

Cross References — Exclusion of authority of state board of health over tobacco, see § 41-29-111.

Unfair Cigarette Sales Law, see § 75-23-1 et seq.

Sale of cigarettes intended for export prohibited, see § 75-23-31 et seq.

Federal Aspects — Federal taxation on tobacco products, see 26 USCS § 5701 et seq.

§ 27-69-3. Definitions.

When used in this chapter:

(a) "State" means the State of Mississippi as geographically defined, and any and all waters under the jurisdiction of the State of Mississippi.

(b) "State Auditor" means the Auditor of Public Accounts of the State of Mississippi, or his legally appointed deputy, clerk or agent.

(c) "Commissioner" means the Commissioner of Revenue of the Department of Revenue, and his authorized agents and employees.

(d) "Person" means any individual, company, corporation, partnership, association, joint venture, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(e) "Consumer" means a person who comes into possession of tobacco for the purpose of consuming it, giving it away, or disposing of it in any way by sale, barter or exchange.

(f) "Tobacco" means any cigarettes, cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco, or substitutes therefor, prepared in such manner as to be suitable for smoking in a pipe or cigarette) and including plug and twist chewing tobacco and snuff, when such "tobacco" is manufactured and prepared for sale or personal consumption. All words used herein shall be given the meaning as defined in the regulations of the Treasury Department of the United States of America.

(g) "First sale" means and includes the first sale, or distribution of such tobacco in intrastate commerce, or the first use or consumption of such tobacco within this state.

(h) "Drop shipment" means and includes any delivery of tobacco received by any person within this state, when payment for such tobacco is made to the shipper, or seller by or through a person other than a consignee.

(i) "Distributor" includes every person, except retailers as defined herein, in the state who manufactures or produces tobacco or who ships, transports, or imports into this state, or in any manner acquires or possesses tobacco, and makes a first sale of the same in the state.

(j) "Wholesaler" includes dealers, whose principal business is that of a wholesale dealer or jobber, who is known to the retail trade as such, and whose place of business is located in Mississippi or in a state which affords reciprocity to wholesalers domiciled in Mississippi, who shall sell any taxable tobacco to retail dealers only for the purpose of resale.

(k) "Retailer" includes every person, other than a wholesale dealer, as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale tobacco to the consumer. The sale of tobacco in quantity lots by retailers to other retailers, transient vendors, or other persons, shall not be construed as wholesale and shall not qualify such retailer for a permit as a wholesaler.

(*l*) "Dealer" includes every person, firm, corporation or association of persons, except retailers as defined herein, who manufacture tobacco for distribution, for sale, for use or for consumption in the State of Mississippi.

The word "dealer" is further defined to mean any person, firm, corporation or association of persons, except retailers as defined herein, who imports tobacco from any state or foreign country for distribution, sale, use, or consumption in the State of Mississippi.

(m) "Distributing agent" includes every person in the state who acts as an agent of any person outside the State of Mississippi, by receiving tobacco in interstate commerce, and storing such tobacco in this state subject to distribution, or delivery upon order from the person outside the state to distributors, wholesalers, retailers and dealers.

(n) "Transient vendor" means and includes every person commonly and generally termed "peddlers" and every person acting for himself, or as an agent, employee, salesman, or in any capacity for another, whether as owner, bailee, or other custodian of tobacco, and going from person to person, dealer to dealer, house to house, or place to place, and selling or offering for sale at retail or wholesale tobacco, and every person who does not keep a regular place of business open at all times in regular hours, and every person who goes from person to person, dealer to dealer, house to house, or place to place, and sells or offers for sale tobacco which he carries with him, and who delivers the same at the time of, or immediately after the sale, or without returning to the place of business operations (a permanent place of business within the state) between the taking of the order and the delivery of the tobacco, or

All persons who go from person to person, house to house, place to place, or dealer to dealer, soliciting orders by exhibiting samples, or taking orders, and thereafter making delivery of tobacco, or filling the order without carrying or sending the order to the permanent place of business, and thereafter making delivery of the tobacco pursuant to the terms of the order, or

All persons who go from person to person, place to place, house to house, or dealer to dealer, carrying samples and selling tobacco from samples, and afterwards making delivery without taking and sending an order therefor to a permanent place of business for the filling of the order, and delivery of the tobacco, or the exchange of tobacco having become damaged or unsalable, or the purchase by tobacco of advertising space, or

All persons who have in their possession, or under their control, any tobacco offered, or to be offered for sale or to be delivered, unless the sale or delivery thereof is to be made in pursuance of a bona fide order for the tobacco, to be sold or delivered, the order to be evidenced by an invoice or memorandum.

(o) "Contraband tobacco" means all tobacco found in the possession of any person whose permit to engage in dealing in tobacco has been revoked by the commissioner; and any cigarettes found in the possession of any person to which the proper tax stamps have not been affixed; and any cigarettes improperly stamped when found in the possession of any person; and all other tobacco upon which the excise tax has not been paid.

(p) "Sale" means an exchange for money or goods, giving away, or distributing any tobacco as defined in this chapter.

(q) "Forty-eight (48) hours" and "seventy-two (72) hours" means two (2) calendar days and three (3) calendar days, respectively, excluding Sundays and legal holidays.

(r) "Stamp" or "stamping," or the import of such word, when used in this chapter, means any manner of stamp or impression permitted by the commissioner that carries out the purposes of the chapter in clearly indicating upon the packages of cigarettes taxed the due payment of the tax and clearly identifying, by serial number or otherwise, the permittee who affixed the stamp to the particular package.

(s) "Manufacturer's list price" means the full sales price at which tobacco is sold or offered for sale by a manufacturer to the wholesaler or distributor in this state without any deduction for freight, trade discount, cash discounts, special discounts or deals, cash rebates, or any other reduction from the regular selling price. In the event freight charges on shipments to wholesalers or distributors are not paid by the manufacturer, then such freight charges required to be paid by the wholesalers and distributors shall be added to the amount paid to the manufacturer in order to determine "manufacturer's list price." In the case of a wholesaler or distributor whose place of business is located outside this state, the "manufacturer's list price" for tobacco sold in this state by such wholesaler or distributor shall in all cases be considered to be the same as that of a wholesaler or distributor located within this state.

SOURCES: Codes, 1942, § 10169; Laws, 1934, ch. 125; Laws, 1940, ch. 119; Laws, 1955, Ex. Sess ch. 115, § 1; Laws, 1960, ch. 480; Laws, 1975, ch. 338; Laws, 1985, ch. 351, § 5; Laws, 2000, ch. 596, § 8; Laws, 2009, ch. 492, § 110, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Transfer of functions of State Auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Commissioner of Revenue of the Department of Revenue, see § 27-3-3.

Federal Aspects — Definitions applicable to federal taxation of tobacco products, see 26 USCS § 5702.

JUDICIAL DECISIONS

1. In general.

The Tax Commission erred in denying a wholesaler's tobacco license to a distributing company owned by franchise retail store owners, on the ground that it was not a "wholesaler" within the meaning of subsection (j) of this section, where such term included all those who made their sales available to retail dealers in general and where the applicant, with limited actual selling success, had continued to stand ready to sell any merchandise to any creditworthy retailer, house brands alone excluded. However, a wholesaler does not have to have sales to show his status as such. Mississippi State Tax Comm'n v. Piggly Wiggly Ala. Distrib. Co., 369 So. 2d 501 (Miss. 1979).

§ 27-69-5. Permit required, and penalty for failure to secure or renew same.

(1) Every distributor, wholesaler, dealer or retailer who desires to become engaged in the sale or use of tobacco upon which a tax is required to be paid shall file with the commissioner an application for a permit to engage in such business. The application for a permit shall be filed on blanks to be furnished by the commissioner for that purpose. The application must be subscribed and sworn to by the person owning the business, or having an ownership interest in the business. If the applicant is a corporation, a duly authorized agent shall execute the application. The application shall show the name of such person, and in case of partnership, the name of each partner, the person's post office address, the location of the place of business to which the permit shall apply, and the nature of the business in which engaged, and any other information the commissioner may require. No distributor, wholesaler, dealer or retailer shall sell any tobacco until the application has been filed, the prescribed permit fee paid, and the permit obtained. Except as otherwise provided in this subsection, the permit shall expire on January 31 of each year. However, a retail permit shall continue in force during the time that the permit holder to whom it is issued continues in the same business at the same location unless such permit is revoked by the commissioner for cause or is revoked pursuant to any provision of Section 27-70-1 et seq., Section 75-23-l et seq. or the Mississippi Juvenile Tobacco Access Prevention Act in Sections 97-32-1 through 97-32-23.

(2) An application shall be filed, and a permit obtained for each place of business owned or operated by each distributor, wholesaler, dealer or retailer.

(3) Upon receipt of the application and any permit fee provided for in this chapter, the commissioner may issue to every distributor, wholesaler, dealer or retailer, for the place of business designated, a nonassignable permit, authorizing the sale or use of tobacco in the state. The permit shall provide that it is revocable, and may be forfeited or suspended upon violation of any provision of this chapter, the Mississippi Tobacco Youth Access Prevention Act of 1997, Section 27-70-7 et seq., Section 75-23-1 et seq. or any rule or regulation adopted by the commissioner. If the permit is revoked or suspended, the distributor, wholesaler, dealer or retailer shall not sell any tobacco from the place of business until a new permit is granted, or the suspension of the old permit removed.

(4) A permit cannot be transferred from one person to another, and the permit shall at all times be publicly displayed by the distributor, wholesaler, dealer or retailer in his place of business so as to be seen easily by the public. A permit may be refused to any person previously convicted of violations of this chapter or Section 27-70-1 et seq.

(5) Information contained on a permit may be disclosed to the holder of a wholesaler's permit, to law enforcement agencies of the federal government, state or any political subdivision of the state, and to the Attorney General and federal agencies responsible for administering tobacco laws.

SOURCES: Codes, 1942, § 10170; Laws, 1934, ch. 125; Laws, 1940, ch. 119; Laws, 1955, Ex. Sess ch. 115, § 2; Laws, 1985, ch. 351, § 6; Laws, 1997, ch. 578, § 12; Laws, 1998, ch. 422, § 1; Laws, 2011, ch. 520, § 4, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Cross References — Penalties for operating without permit, see §§ 27-69-7 through 27-69-11.

Permits for terminals or warehouses, see § 27-69-27.

Revocation of permit for failure to preserve or permit inspection of merchandise, invoices, books, papers and memoranda, see § 27-69-37.

Confiscation of tobacco for violations, see § 27-69-53.

Mississippi Juvenile Tobacco Access Prevention Act, see § 97-32-1 et seq.

Criminal offense of selling or giving tobacco to children, see § 97-32-5.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 10170] requires separate application, permit and payment of tax for each of two places of business selling tobacco products operated by one corporation in adjoining portions of one building with two separate entrances, at two different street addresses, with two different managers, under two different names, one being credit business and other being strictly cash business. A.J. Lyon & Co. v. Stone, 207 Miss. 673, 43 So. 2d 104 (1949).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 45 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23-33 (proceedings for judicial review of refusal of license).

CJS. 53 C.J.S., Licenses §§ 82, 84-86, 97-99, 102-103.

§ 27-69-7. Permit and privilege taxes required; penalty for violations.

In addition to the excise tax on each person selling, using, consuming, handling or distributing tobacco as hereinafter provided, it is hereby made the duty of the commissioner to collect a privilege tax of One Hundred Dollars ($100.00) for each permit issued to every distributor, wholesaler or dealer doing business in this state. However, the amount of the privilege tax to be paid for a permit issued for a period of less than twelve (12) months shall be the proportionate amount of the annual privilege tax that the number of months, or part of a month, remaining until the permit expiration date bears to twelve (12) months, but in no case shall the privilege tax be less than Ten Dollars ($10.00).

Foreign manufacturers, wholesalers, or distributors may secure a permit from the commissioner, upon the payment of a fee of One Hundred Dollars ($100.00), and shall agree in an application sworn to and certified, that the excise tax shall be paid on all shipments of taxable tobacco into the State of Mississippi, that the required tax stamps shall be affixed to cigarettes, and that the commissioner, or his authorized agent, shall be permitted to inspect and audit their records of tobacco shipments into the State of Mississippi at any and all reasonable times.

It is further provided that any person who engages in any business for which a permit is required by this chapter, before procuring a permit, or after the permit is cancelled, shall be guilty of a misdemeanor, and punishable by a fine of not exceeding Five Hundred Dollars ($500.00), nor less than Fifty Dollars ($50.00).

SOURCES: Codes 1942, § 10171; Laws, 1940, ch. 119; Laws, 1954, ch. 364; Laws, 1955, Ex. Sess ch. 115, § 3; Laws, 1985, ch. 351, § 7; Laws, 1998, ch. 422, § 2, eff from and after January 31, 1998.

Cross References — Out-of-state audit of books to determine tax liability, see §§ 27-3-63, 27-3-65.

Revocation of permit after second offense, see § 27-69-9.

Penalty for operating as wholesaler without permit, see § 27-69-11.

Requirement that nonresident tobacco dealers obtaining license or permit comply with additional requirements imposed by their state of domicile on Mississippi dealers licensed to do business in that state, see § 27-69-79.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 39 et seq.

CJS. 53 C.J.S., Licenses § 118.

§ 27-69-9. Permit may be revoked and reinstated.

In addition to the penalties imposed in this chapter, after the second offense for any violation, the commissioner may revoke any permit which may have been issued to any person, or persons, violating any provisions of this chapter, or any rules or regulations promulgated by the commissioner under authority of this chapter.

The commissioner, in the event a permit is revoked, is required to notify all manufacturers, wholesalers and distributors having a permit required by this chapter, that the permit has been revoked, and such manufacturer, wholesaler and distributor is henceforth prohibited from selling taxable tobacco to such dealer or retailer. The commissioner may notify manufacturers, wholesalers and distributors as required by this paragraph either manually or electronically and shall specify by rule or regulation the method by which the notification shall be made.

SOURCES: Codes, 1942, § 10172; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 8; Laws, 1997, ch. 578, § 13; Laws, 2005, ch. 499, § 29; Laws, 2012, ch. 566, § 8, eff from and after passage (approved May 23, 2012.)

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage [approved May 23, 2012], and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Cross References — Penalties for operating without permit, see § 27-69-11.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 58 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41-49, 61-63.

12 Am. Jur. Legal Forms 2d, Licenses and Permits §§ 164:21, 164:22.

8 Am. Jur. Legal Forms, Licenses, Forms 8:431-8:433 (bond or security for license).

CJS. 53 C.J.S., Licenses § 96.

§ 27-69-11. Penalties for operating without a permit.

Any person engaged in the business of buying, selling or distributing within this state, tobacco as a wholesaler without having secured the required permit from the commissioner shall be guilty of a misdemeanor.

SOURCES: Codes, 1942, § 10173; Laws, 1932, ch. 92; Laws, 1934, ch. 125.

Cross References — Penalty for engaging in any business within statute without permit, see § 27-69-7.

Revocation of permit, see § 27-69-9.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-69-13. Applicability of tax.

There is hereby imposed, levied and assessed, to be collected and paid as hereinafter provided in this chapter, an excise tax on each person or dealer in cigarettes, cigars, stogies, snuff, chewing tobacco, and smoking tobacco, or substitutes therefor, upon the sale, use, consumption, handling or distribution in the State of Mississippi, as follows:

(a) On cigarettes, the rate of tax shall be Three and Four-tenths Cents (3.4¢) on each cigarette sold with a maximum length of one hundred twenty (120) millimeters; any cigarette in excess of this length shall be taxed as if it were two (2) or more cigarettes. Provided, however, if the federal tax rate on cigarettes in effect on June 1, 1985, is reduced, then the rate as provided herein shall be increased by the amount of the federal tax reduction. Such tax increase shall take effect on the first day of the month following the effective date of such reduction in the federal tax rate.

(b) On cigars, cheroots, stogies, snuff, chewing and smoking tobacco and all other tobacco products except cigarettes, the rate of tax shall be fifteen percent (15%) of the manufacturer's list price.

No stamp evidencing the tax herein levied on cigarettes shall be of a denomination of less than One Cent (1¢), and whenever the tax computed at the rates herein prescribed on cigarettes shall be a specified amount, plus a fractional part of One Cent (1¢), the package shall be stamped for the next full cent; however, the additional face value of stamps purchased to comply with taxes imposed by this section after June 1, 1985, shall be subject to a four percent (4%) discount or compensation to dealers for their services rather than the eight percent (8%) discount or compensation allowed by Section 27-69-31.

Every wholesaler shall purchase stamps as provided in this chapter, and affix the same to all packages of cigarettes handled by him as herein provided.

The above tax is levied upon the sale, use, gift, possession or consumption of tobacco within the State of Mississippi, and the impact of the tax levied by this chapter is hereby declared to be on the vendee, user, consumer or possessor of tobacco in this state; and when said tax is paid by any other person, such payment shall be considered as an advance payment and shall thereafter be added to the price of the tobacco and recovered from the ultimate consumer or user.

SOURCES: Codes, 1942, § 10174; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1938, ch. 118; Laws, 1938, Ex. ch. 22; Laws, 1954, ch. 372; Laws, 1955, Ex. chs. 113, § 1; 116, §§ 1, 2; Laws, 1958, ch. 578; Laws, 1962, ch. 603, §§ 1-5; Laws, 1964, chs. 524, 535; Laws, 1972, ch. 488, § 1; Laws, 1985, ch. 351, § 9; Laws, 2009, ch. 562, § 1, eff from and after May 15, 2009.

Editor's Note — The preamble to Laws of 2009, ch. 562, effective May 15, 2009, provides as follows:

"WHEREAS, the federal government has increased the federal excise tax on cigarettes by 62¢ per pack; and

"WHEREAS, the increase in the state excise tax on cigarettes contained in this act is 50¢ per pack; and

"WHEREAS, concern has been expressed regarding the amount of revenue from any increase in the state excise tax on cigarettes because of decreases in sales as a result of declines in consumption and other factors; and

"WHEREAS, the State Tax Commission projects a reduction in consumption of approximately 14% as a result of the federal excise tax increase and the increase in the state excise tax in this act; and

"WHEREAS, the State Tax Commission estimates that revenue from the increase in the excise tax contained in this act will be approximately $30,740,000.00 for the remainder of fiscal year 2009, and approximately $112,900,000.00 for fiscal year 2010; and

"WHEREAS, because the estimates by the State Tax Commission do not take into consideration possible reductions in cross-border sales of cigarettes as a result of increases in the excise tax, and because of the lack of precision in estimates of reductions in consumption of cigarettes because of increases in the excise tax, the Legislature feels that an estimated revenue increase in the amount of $106,175,000.00 for fiscal year 2010 as a result of the excise tax increase contained in this act is reasonable; NOW, THEREFORE,

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:"

Laws of 2009, ch. 562, § 2, effective May 15, 2009, provides:

"SECTION 2. In addition to cigarettes sold, used, consumed, handled or distributed on or after the effective date of the tax increase authorized in Section 27-69-13, this tax increase shall specifically apply to, and be due and payable on, cigarettes in the inventory of a wholesaler or retailer on the date the increase takes effect and on any cigarette tax stamps previously purchased at the lower tax rate but not yet affixed to cigarettes before the effective date of this tax increase. The tax levied under Chapter 69 of Title 27 on those cigarettes to which a stamp is or will be affixed and which is in the inventory of a wholesaler or retailer on the effective date of the tax increase authorized in Section 1 of this act shall not be considered paid until the tax as increased in Section 1 of this act is paid. As used in this section, the term "wholesaler" means a wholesaler who holds a permit issued under Section 27-69-5. As used in this section, the term "retailer" means a retailer who holds a permit issued under Section 27-69-5. In regard to any cigarettes in the inventory of a wholesaler or retailer on the effective date of the tax increase authorized in Section 1 of this act to which a stamp is affixed representing payment of the tax prior to the tax increase, and in regard to any stamps purchased by the wholesaler at the rate of tax prior to the tax increase which are in the possession of the wholesaler but not yet affixed on the effective date of the tax increase, the wholesaler or retailer having such cigarette and/or stamps in his inventory on the effective date of the tax increase shall, within thirty (30) days after the effective date of this section, pay to the State Tax Commission the difference in the amount of tax previously paid on these cigarettes and stamps and the higher tax rate as set out in Section 1 of this act. On the effective date of this section, any tobacco wholesaler who has unaffixed Mississippi cigarette stamps that exceed an average of sixty-day usage of such stamps shall, within twenty-one (21) days, return the stamps exceeding the average sixty-day usage for credit to be applied toward the new stamps from the commission. The average sixty-day stamp usage shall be determined by dividing the total stamp usage in the last twelve-month period prior to the effective date of this section by six (6). This is subject to verification by the State Tax Commission. However, no partial rolls may be returned for credit. Any rolls that are not complete rolls of stamps may subject the tobacco wholesaler to a penalty of Ten Thousand Dollars

($10,000.00) per roll. The tax on inventory and stamps shall be paid in the manner specified by the State Tax Commission."

Laws of 2009, ch. 562, § 6, as amended by Laws of 2009, 2nd Extraordinary Session, ch. 89, § 1, effective June 30, 2009, provides as follows:

"SECTION 6. Sections 1 and 2 of this act shall take effect and be in force from and after May 15, 2009. Sections 3, 4 and 5 of this act shall take effect and be in force from and after July 1, 2009, if a bill appropriating not less than $27,000,000.00 for fiscal year 2010 to the Motor Vehicle Ad Valorem Tax Reduction Fund is enacted into law."

Cross References — Exemption from tax stamp requirements for manufacturers who sell only to wholesalers, see § 27-69-27.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 521 et seq.

CJS. 84 C.J.S., Taxation § 115 et seq. 85 C.J.S., Taxation § 2178.

§ 27-69-15. Stamps.

Any retailer, transient vendor, distributing agent, salesman, or other dealer who shall receive any cigarettes other than from a wholesaler having a permit as herein provided, and not having the necessary stamps already affixed, shall, after the receipt of such cigarettes, within the time limit herein provided, present the same to some wholesaler having such permit, for the affixing of the stamps required, and it shall be the duty of such wholesaler, thereupon and upon the payment to him by such retailer of the face value of the stamps required, to affix the stamps to said cigarettes in the same manner as if the cigarettes were handled and sold by such wholesaler, provided, that such wholesaler, before affixing the stamps, shall require of the retailer, transient vendor, distributing agent, salesman, or other dealer, the original invoice for the cigarettes to be stamped, and such wholesaler shall in each instance note upon the invoice, the denominations and number of stamps affixed to the cigarettes covered by said invoice, the notation to be made in ink, or other manner not easy to erase, at the time the stamps are affixed.

It is further provided that, in addition hereto, the wholesaler shall keep a separate record of all stamps affixed to taxable cigarettes presented by retailers, transient vendors, distributing agents, salesmen, or other dealers, showing the name of the retailer, transient vendor, distributing agent, salesman, or other dealer, name of the shipper, date of shipper's invoice, the date stamps were affixed, denomination of stamps affixed, and total value of stamps affixed.

When the request is made to any wholesaler in this state by a retailer, transient vendor, distributing agent, salesman, or other dealer in this state, said request being duly and seasonably made for the affixing of stamps, and the request is accompanied by proper remittance and invoice, and such wholesaler refuses to affix the stamps to cigarettes as requested, said wholesaler shall forfeit to the state a penalty of Twenty-five Dollars ($25.00) for each offense, the same to be collected by the commissioner and, in addition thereto, in the discretion of the commissioner, forfeit his permit to handle stamps. In the event of such refusal on the part of any wholesaler to affix stamps said retailer, transient vendor, distributing agent, salesman, or other dealer may make application to the commissioner for stamps to be placed on the cigarettes upon which the wholesaler refused to affix the stamps, said application to be accompanied by an affidavit from the retailer, transient vendor, distributing agent, salesman, or other dealer, or some other credible person, setting forth the facts, whereupon the commissioner may issue and sell to such retailer, transient vendor, distributing agent, salesman, or other dealer, a sufficient number of stamps to be affixed to the cigarettes.

Stamps shall not be affixed to any cigarettes except by a wholesale dealer having a permit, except as otherwise provided in this chapter.

Stamps shall not be required to be affixed to any cigarettes while the same is in interstate commerce.

Any person who receives cigars, smoking tobacco, chewing tobacco, snuff or any other tobacco products except cigarettes from anyone other than a wholesaler having a tobacco permit issued by this state and the excise tax on the tobacco received has not been paid, shall compute the excise tax due the State of Mississippi at the rate prescribed herein on forms furnished by the commissioner for that purpose. Such report shall be accompanied by the remittance for the tax due and shall be filed with the commissioner within forty-eight (48) hours after receipt of the tobacco by such person.

In no case shall the provisions of this chapter be construed to require the payment of a tax upon any tobacco upon which the tax herein levied has once been paid to the state.

SOURCES: Codes, 1942, § 10175; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1985, ch. 351, § 10, eff from and after June 1, 1985.

Cross References — Penalty for reuse of stamps, see § 27-69-47.
Refund on damaged goods, see § 27-69-49.
Refund for stamps shipped into another state, see § 27-69-51.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

It was within power of legislature in tobacco tax statute to require that wholesalers affix stamps to all goods presented to them. Mississippi State Tax Comm'n v. Flora Drug Co., 167 Miss. 1, 148 So. 373 (1933).

That tobacco tax statute requiring retailers purchasing from wholesalers having no permit to present tobacco to wholesaler having permit to have stamps affixed may impose some burden does not make statute invalid. Mississippi State Tax Comm'n v. Flora Drug Co., 167 Miss. 1, 148 So. 373 (1933).

Tobacco tax statute requiring retailer purchasing from wholesaler having no permit to present tobacco to wholesaler having permit to have stamps affixed does not discriminate in favor of wholesaler within state, since wholesaler outside state may procure stamps and affix them to merchandise. Mississippi State Tax Comm'n v. Flora Drug Co., 167 Miss. 1, 148 So. 373 (1933).

2. Construction and application.

Under tobacco tax statute, where party orders cigars for his own use, no stamps need be affixed. Mississippi State Tax Comm'n v. Flora Drug Co., 167 Miss. 1, 148 So. 373 (1933).

Under tobacco tax statute, goods can be ordered and delivered from another state into state without stamps being placed thereon until interstate transaction is ended. Mississippi State Tax Comm'n v. Flora Drug Co., 167 Miss. 1, 148 So. 373 (1933).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products. 46 A.L.R.3d 1342.

CJS. 85 C.J.S., Taxation § 2178.

§ 27-69-17. When distributors not required to affix stamps.

Any distributor engaged in manufacturing tobacco products in this state shall not be required to affix stamps to manufactured cigarette products before delivery to wholesalers qualified to affix stamps under the provisions of this chapter, but shall affix the required stamps to any taxable cigarettes delivered to retailers or consumers.

SOURCES: Codes, 1942, § 10189.5; Laws, 1955, Ex. Sess, ch. 115, § 7; Laws, 1985, ch. 351, § 11, eff from and after June 1, 1985.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products. 46 A.L.R.3d 1342.

§ 27-69-19. Dealers liable; exception.

The provisions of this chapter shall not apply to dealers in tobacco made the subject of interstate sales, except as provided in Chapter 70, Title 27, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10176; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 2009, 2nd Ex Sess, ch. 85, § 13, eff from and after July 1, 2009.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2178.

§ 27-69-21. Exemptions.

(1) The provisions of this chapter shall not apply to any tobacco donated to any charitable organization for the use of inmates of any institution supported, in whole or in part, by donations from the public, nor shall its provisions apply to tobacco purchased by the state or federal government for use of inmates of any state or federal institution. This exemption from the payment of the tax can only be allowed by the commissioner on sales supported by proof that such taxable tobacco was not purchased for resale, but donated to the inmates of the institution claiming such exemption. This proof must be

accompanied by an exemption claim form as prescribed by the commissioner and signed under penalty of perjury by an official of the institution requesting the exemption.

(2) It is further provided that no tax shall apply on sales of tobacco by a wholesaler or distributor to a retailer for resale on the Mississippi and Tennessee Rivers at midstream or in the intercoastal waterway in the Mississippi Sound to crew members for use or consumption on boats or barges transporting property in interstate commerce.

SOURCES: Codes, 1942, § 10177; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, ch. 118; Laws, 1970, ch. 548, § 1; Laws, 2012, ch. 566, § 4, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage [approved May 23, 2012], and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2178.

§ 27-69-23. Tax additional.

The tax imposed by this chapter is in addition to all other privileges, licenses, and any and all other taxes now imposed by law in this state; but nothing in this section shall be construed to permit the taxation by municipalities or boards of supervisors of the privilege taxed by this chapter.

SOURCES: Codes, 1942, § 10178; Laws, 1934, ch. 125.

Cross References — Sales tax, see § 27-65-1 et seq.
Use tax, see § 27-67-1 et seq.
Salesmen's tax law, see § 27-67-501 et seq.

§ 27-69-25. Unpaid taxes a debt.

All taxes and penalties imposed under the provisions of this chapter remaining due and unpaid shall constitute a debt to the State of Mississippi, which may be collected from the person owing same by suit or otherwise.

SOURCES: Codes, 1942, § 10179; Laws, 1932, ch. 92; Laws, 1934, ch. 125.

Cross References — Action to recover tax, penalty and interest, see § 27-35-5.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2212 et seq.

§ 27-69-27. Manner and time of affixing stamps; manufacturers and wholesale distributors excepted.

The payment of the tax imposed by this chapter shall be evidenced by affixing stamps to each individual package of cigarettes usually sold to consumers, as distinguished from cartons or larger units which are composed of a number of individual packages.

Except as otherwise provided in this paragraph, the stamp shall be affixed within seventy-two (72) hours after the receipt of the cigarettes by the wholesaler, and within forty-eight (48) hours after receipt of the cigarettes by the retailer; provided, that in the case a dealer conducts a wholesale and retail business at one (1) place of business, stamps shall be affixed within forty-eight (48) hours after receipt of the cigarettes. However, the provisions of this paragraph shall not apply to tobacco at the point it is purchased at a sale under Section 27-69-56. The stamp must be so securely affixed as to require the continued application of water or of steam to remove it, or so that it cannot be otherwise removed without destruction or mutilation.

The excise tax imposed on cigars, smoking tobacco, chewing tobacco, snuff and all other tobacco products except cigarettes shall be computed by the application of the excise tax rate to the manufacturer's list price on all purchases of such tobacco. The excise tax shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the tax accrues. The tax shall be filed with the commissioner on forms prescribed by the commissioner.

Provided, however, manufacturers or other wholesale distributors of tobacco, which are subject to the excise taxes imposed by Section 27-69-13 of this chapter for the privilege of selling or using such tobaccos within this state, who maintain "terminals" or warehouses in which such tobaccos are stored, and who sell only to licensed wholesale dealers within the state who are qualified to purchase and affix the stamps required, may maintain such "spot stocks," intended only for such sales, without affixing the stamps or filing returns and paying the tax.

Any person desiring to maintain such "terminal" or warehouse, shall make application to the commissioner and obtain a permit to maintain such stocks without affixing stamps thereto, for sale exclusively to out-of-state purchasers, or licensed wholesale dealers within this state, and the commissioner is hereby authorized to grant such permit upon the execution and filing with the commissioner, by the applicant, a bond with surety companies, authorized to do business in Mississippi, as surety thereon, and conditioned for the strict compliance by the applicant, with the following conditions under which said privilege may be granted.

The person maintaining such stock of untaxed tobacco shall supply to the commissioner monthly, or at such times as the commissioner may require, complete invoices of all tobaccos received, and shall also supply correct invoices of all tobaccos removed from such "terminal" or warehouse, said invoices to contain the correct name and address of all persons to whom such tobacco shall be delivered or consigned, whether within or without the State of Mississippi.

The penalty of such bond shall be determined by the commissioner, in an amount sufficient to protect the State of Mississippi from any loss of revenue which might occur by reason of the failure of principal to strictly adhere to the requirement that no tobacco would be sold from such stock within the State of Mississippi, except to licensed wholesale dealers.

SOURCES: Codes, 1942, § 10180; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, Ex. Sess, ch. 22; Laws, 1948, ch. 460; Laws, 1955, Ex. Sess, chs. 113, § 2; 116, §§ 1, 2; Laws, 1985, ch. 351, § 12; Laws, 2009, 2nd Ex Sess, ch. 87, § 2, eff from and after passage (approved June 30, 2009.)

Editor's Note — Section 27-69-56, which authorized law enforcement officers to seize certain contraband tobacco and provided the procedures for disposal of the seized tobacco and is referenced above, was repealed by Section 1 of Chapter 87, Laws of 2009, effective July 1, 2010.

Cross References — Penalty for failure to affix stamps, see § 27-69-41.

Penalty for reuse of stamps, see § 27-69-47.

Confiscation of tobacco upon which no tobacco tax stamp is affixed within the required time, see § 27-69-53.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products. 46 A.L.R.3d 1342.

§ 27-69-29. Repealed.

Repealed by Laws of 1985, ch. 351, § 23, effective from and after June 1, 1985.

[Codes, 1942, § 10181; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1938, ch. 118]

Editor's Note — Former § 27-69-29 provided for cancellation of stamps used for denoting any tax imposed by Chapter 69.

§ 27-69-31. Compensation to dealers.

Dealers subject to the provisions of this chapter shall be allowed, as compensation for their services in affixing the stamps herein required, a sum equal to eight percent (8%) of the face value of the stamps purchased by them, provided that the commission shall allow no discount on the purchase of stamps by wholesalers of an aggregate amount of less than one hundred dollars ($100.00), and by retailers of an aggregate amount of less than fifty dollars ($50.00) in any one order.

It is further provided that the commissioner may, in his discretion, either reduce the compensation allowed, or disallow any compensation for the affixing of stamps, for failure of such dealer to comply with any provisions of the law or rules and regulations promulgated by the commissioner.

SOURCES: Codes, 1942, § 10182; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1938, ch. 118; Laws, 1964, ch. 536, § 1, eff from and after July 1, 1964 (approved June 11, 1964).

Cross References — Discount or compensation to dealers of tobacco for services in attaching tax stamps, see § 27-69-13.

§ 27-69-33. Segregation of stock for interstate shipment.

Manufacturers, distributors and wholesalers of cigars, cigarettes or smoking tobacco subject to the tax under this chapter, doing both intrastate and interstate business in such tobacco, must qualify as interstate dealers in such tobacco by applying to the commissioner for permission to engage in such business, and, upon receipt of such permission, he shall be permitted to set aside such part of his stock as may be absolutely necessary for the conduct of such interstate business, without affixing the stamps to cigarettes required by this chapter. Said interstate stock shall be kept in an entirely separate part of the building, separate and apart from intrastate stock, and the said interstate business shall be conducted by the said wholesale dealer in accordance with rules and regulations to be promulgated by the commissioner.

It is further provided that shipment of such merchandise be made only by a railroad, express company, boat line, or motor freight line certified by the Mississippi Public Service Commission as a common carrier, or by registered or insured parcel post.

It is further provided that any manufacturer, distributor, or wholesaler of cigars, cigarettes or smoking tobacco, engaged in interstate commerce in such tobaccos, shall report to the commissioner on or before the fifteenth day of each month, on forms prescribed by the commissioner, all sales of cigarettes made in interstate commerce during the preceding month to which Mississippi stamps were not affixed. These reports must be made supplementary to the reports required to be filed by Section 27-69-35 of this chapter.

Each shipment must be covered by a complete copy of invoice of the consignor, and supported by properly receipted bill of lading of the transportation company, or post office department as specified in the foregoing, and the receipted bills of lading and invoices shall be subject to inspection by the commissioner for a period of three (3) years.

The commissioner is further authorized to verify the actual delivery to the consignee of such unstamped taxable cigarettes before allowing credit, and for the purpose of such verification, the commissioner may exchange information with the proper authorities of other states as to movement of taxable tobacco to and from other states into and from the State of Mississippi.

SOURCES: Codes, 1942, § 10183; Laws, 1932, ch. 92; Laws, 1936, ch. 156; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 13, eff from and after June 1, 1985.

Cross References — Mississippi Public Service Commission generally, see § 77-1-1 et seq.

§ 27-69-35. Records of dealers.

It shall be the duty of every person subject to the provisions of this chapter, to keep an accurate set of records, showing all transactions had with reference to the purchase, sale or gift of cigars, cigarettes, or smoking tobacco, and such person shall keep separately all invoices of cigars, cigarettes or smoking tobacco, and shall keep a record of all stamps purchased, and such records, and all stocks of cigars, cigarettes or smoking tobacco on hand, shall be open to inspection at all reasonable times to the commissioner; provided, however, that all retail dealers, transient vendors, distributing agents, or other dealers purchasing, or receiving cigars, cigarettes, or smoking tobacco from without the state, whether the same shall have been ordered through a wholesaler, or jobber in this state, or by drop shipment, or otherwise, shall within five (5) days after receipt of the same, mail a duplicate invoice of all such purchases, or receipts, to the commissioner, and failure to furnish such duplicate invoices shall be deemed a misdemeanor.

It is further provided that all manufacturers, distributors and wholesalers of cigars, cigarettes or smoking tobacco, who have a permit required by this chapter shall furnish the commissioner with a statement monthly, showing the amount of taxable tobacco received, and must also furnish the commissioner with duplicate invoices covering stamps affixed to drop shipments purchased by retailers.

In the examination of such books, records, etc., the commissioner shall have the power to administer oaths to any person, and any person answering falsely, under oath, any of such questions, shall be guilty of perjury.

If any person being so examined, fails to answer questions propounded to him by the commissioner, or if any person, being summoned to appear and answer such questions, shall fail or refuse to do so, or if any person shall fail or refuse to permit the inspection of his stock of merchandise, or invoices, or books, or papers pertaining to any dealers in cigars, cigarettes or smoking tobacco, the commissioner may make such fact known to the circuit court of the county in which such failure or refusal occurs, or judge thereof in termtime or in vacation, by petition, and such circuit court, or judge thereof, shall issue a summons for such person so refusing, returnable on a date to be fixed by said court, or said judge, and on said date, the said circuit court, or the circuit judge, shall proceed to examine into the truth of the matter set out in said petition, and if the same be found to be true, the said circuit court, or circuit judge, shall issue a writ of subpoena duces tecum ordering and directing the person so summoned to bring into court, and exhibit for the inspection of the commissioner, all such books, records, invoices, etc., as the court may deem proper from all the facts and circumstances in the case. Any person failing or refusing to present such books, records, invoices, etc., or failing or refusing to testify, shall be punished for contempt as provided by Section 9-1-17 of the Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10184; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 14, eff from and after June 1, 1985.

Cross References — Subpoena for witnesses, generally, see §§ 13-3-93, 99-9-11.

Out-of-state audit of books to determine tax liability, see §§ 27-3-63, 27-3-65.

Supplementary reports of sales of cigarettes in interstate commerce, see § 27-69-33.

Crime of perjury, see § 97-9-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-69-37. Preservation of invoices.

Each person engaged as a wholesaler or retailer in the sale, use or consumption of tobacco, shall keep and preserve separately from all other invoices, for a period of three (3) years, all invoices of tobacco and of stamps bought by him, and shall permit the commissioner to inspect and examine all merchandise, invoices, books, papers and memoranda as may be necessary in ascertaining whether or not the tax levied herein has been paid, or to determine the amount of such tax that may be due, or due and unpaid. The failure of any person required to pay the tax herein levied, to preserve said invoices as above provided, or to permit the inspection and examination of merchandise, invoices, books, papers and memoranda, at the request of the commissioner, or his authorized agent, shall be deemed a violation of this chapter, and the commissioner may revoke the permit issued to such person as provided under Section 27-69-5 of this chapter, and also punishable as hereinafter set out. And the record of said invoices shall be open for inspection by the commissioner for the purpose of enforcing the provisions of this chapter.

SOURCES: Codes, 1942, § 10185; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1955, Ex. Sess, ch. 115, § 4; Laws, 1985, ch. 351, § 15, eff from and after June 1, 1985.

§ 27-69-39. Liability of persons, carriers, etc.

The provisions of this chapter shall extend and apply to every person using the public roads or highways, whether operating as common carrier, or contract carrier, or possessing, or transporting in this state any tobacco for delivery, sale or distribution, unless exempted hereunder. If such person is engaged in interstate commerce, he must have in his actual possession while engaged in transporting such tobacco, invoices or delivery tickets correctly disclosing the consignor and consignee of each and every item of tobacco being transported, provided that common carriers operating under the supervision of the interstate commerce commission, and having a permanent office, or place of business in this state where permanent and correct records are kept, are not required to have in the immediate possession of the person in charge of the vehicle, in which tobacco is being transported, such invoices or delivery tickets, but the records of such common carriers shall be open to the inspection of the commissioner, or any representative of the commissioner, at all reasonable times, for the purpose of obtaining information with reference to all tobacco transported into this state. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in tobacco in this state, and is subject to the provisions of this chapter.

SOURCES: Codes, 1942, § 10186; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156.

Cross References — Reports of motor carriers, see § 77-7-261.

§ 27-69-41. Penalties.

If any person subject to the provisions of this chapter, or any rules or regulations promulgated by the commissioner under authority hereof, shall be found to have failed to affix the stamps required, or to have the same affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter, or rules and regulations promulgated by the commissioner in the administration of this chapter, there shall be collected from such person, in addition to the tax that may be due, a penalty of fifty percent (50%) of the tax due; and the commissioner, or his duly authorized representative, may make immediate demand upon such person for the payment of all such taxes and penalties. Provided, that the commissioner, for good reason shown, may remit all or any part of the penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate of twelve percent (12%) per annum. The keeping of any unstamped cigarettes or untaxed tobacco at a place of business where such articles are sold, shall be prima facie evidence of intent to violate the provisions of this chapter.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Sales Tax Law, except where there is conflict, then the provisions of this chapter shall control.

SOURCES: Codes, 1942, § 10187; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1955, Ex. Sess, ch. 115, § 5; Laws, 1985, ch. 351, § 16, eff from and after June 1, 1985.

Cross References — Enrollment of judgments, generally, see § 11-7-189.
Attachment at law against debtors, see § 11-33-1 et seq.
Executions, generally, see § 13-3-111 et seq.
Sheriff's execution and return of process, see § 19-25-37.
Mississippi Sales Tax Law generally, see § 27-65-1 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products. 46 A.L.R.3d 1342.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 874.

CJS. 85 C.J.S., Taxation § 2219.

§ 27-69-43. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

Codes, 1942, § 10188; Laws, 1932, ch. 192; Laws, 1934, ch. 125.

Editor's Note — Former § 27-69-43 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-69-45. Repealed.

Repealed by Laws of 1985, ch. 351, § 24, effective from and after June 1, 1985.

[Codes, 1942, § 10189; Laws, 1932, ch. 192; Laws, 1934, ch. 125; Laws, 1955, Ex. Sess, ch. 115, § 6]

Editor's Note — Former § 27-69-45 provided for fines to be assessed against any person for failure to affix stamps required by this chapter.

§ 27-69-47. Penalty for reuse of stamps.

Whoever wilfully washes, removes, or otherwise prepares for use stamps, provided for in this chapter, with intent to use, or cause the same to be used, after it has already been used, or who knowingly or wilfully buys or offers for sale, or gives away, any such stamps to any person for use, or knowingly uses the same, or has in his possession any such washed, restored or altered stamp which has been removed from the cigarette package to which it has been previously affixed, or whoever, for the purpose of evading any tax hereunder, uses any stamp which has heretofore been used for the purpose of paying any tax provided in this chapter, or whoever buys, sells, uses or offers to buy, sell or give away, or has in his possession any stamp or stamps not lawfully purchased, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the State Penitentiary for not less than one (1) year, nor more than ten (10) years, or by both said fine and imprisonment.

SOURCES: Codes, 1942, § 10190; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1985, ch. 351, § 17, eff from and after June 1, 1985.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2219.

§ 27-69-49. Refund on damaged goods; how obtained.

(1) The commissioner may promulgate rules and regulations providing for refunds to dealers of the face value of stamps affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund is to be made by issuing new stamps of an aggregate value of the tax paid on the goods adjudged to be unfit for use, consumption, unsalable, or any other loss suffered.

(2) The proof of loss required to obtain a refund of the amount so authorized in subsection (1) of this section, shall be in a form prescribed by the commissioner and signed by the applicant under penalty of perjury, his agent or representative, or other person familiar with the facts relied upon, setting out in detail the facts and circumstances under which the loss occurred.

(3) The commissioner shall keep a permanent record of all such refunds made by him, in his office, and shall receive credit for such refunds.

(4) No cigarettes which have been adjudged unfit for use and consumption, or unsalable, shall again be offered for sale in this state, and any person selling or offering to sell, or to give away, any such cigarettes shall be guilty of a misdemeanor.

SOURCES: Codes, 1942, § 10191; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 18; Laws, 2012, ch. 566, § 5, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage [approved May 23, 2012], and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-69-51. Refund for stamps shipped into another state; refund of tax paid on cigarettes in possession of wholesaler ceasing to do business in Mississippi.

(1) If any wholesaler subject to the provisions of this chapter shall sell or ship or transport any cigarettes into another state to a regular dealer, he shall be allowed a refund of the tax paid on those cigarettes. The refund shall be made by way of new stamps issued to him by the commissioner upon application accompanied by sworn acknowledgment from the purchaser, showing the units, items and date of delivery, the acknowledgment to state that he has received such cigarettes, and that stamps of an aggregate value, of which refund is requested, were on the cigarettes so acknowledged; provided further, that the acknowledgment shall show that the stamps affixed to the cigarettes,

for which refund is requested, have had the cancellation marked "void" by ink, or by imprinting.

(2) If any wholesaler subject to the provisions of this chapter shall cease to do business in the State of Mississippi, he shall be allowed a refund of the tax paid on cigarettes in his possession. Such refund request shall be accompanied by a sworn acknowledgement that the wholesaler is no longer doing business in the State of Mississippi, and the acknowledgment must state that stamps with a value in the amount of the refund being requested are being returned to the Department of Revenue before use.

SOURCES: Codes, 1942, § 10192; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 19; Laws, 2011, ch. 520, § 5, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides: "SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation §§ 2206, 2208.

§ 27-69-53. Commodities subject to confiscation.

Any cigarettes found at any point within this state, in the possession of a dealer or any person for a period of time longer than specified by Section 27-69-27 and not having affixed to the package, the stamps as required, and any tobacco subject to the tax found in the possession of any wholesaler, distributor or dealer required by this chapter to obtain a permit, who has not procured a permit, or whose permit has been revoked and not reinstated, are hereby declared to be contraband goods, and the same may be seized by the commissioner, or his agents, or employees, or by any peace officer of this state, when directed by the commissioner so to do, without a warrant, and the said goods shall be offered by the commissioner for sale at public auction to the highest bidder after due advertisement, but the commissioner before delivering any of said goods so seized shall require the purchaser to affix the proper amount of stamps to the cigarettes or pay the excise tax on other tobacco as required by this chapter. The proceeds of sale for any goods sold shall be paid to the State Treasurer by the commissioner as are other funds collected. Provided, that the cost of confiscation and sale shall be paid out of the proceeds derived from such sale before making remittance to the State Treasurer. The time limit herein specified for affixing said stamps shall not apply to any person who, within said time limits, shall offer for sale, either at wholesale or retail, any cigarettes, and all cigarettes when offered for sale either at wholesale or retail without the stamps having been first affixed, shall be subject to confiscation. Provided further, that any vehicle, not a common carrier, which may be used in transporting for the purpose of sale any unstamped cigarettes, shall likewise be subject to confiscation and sale in the same manner as above provided.

The seizure, forfeiture and sale of contraband goods under this section and Section 27-69-55 is supplemental and in addition to the seizure, forfeiture and sale of contraband tobacco provided for in Section 27-69-56. Where a basis exists under both this section and Section 27-69-55 and under Section 27-69-56 for the seizure, forfeiture and sale of the same contraband goods, such actions can proceed simultaneously. Where such simultaneous seizure, forfeiture and sale is undertaken and there is a conflict between the procedures contained in this section and Section 27-69-55 and those contained in Section 27-69-56, the procedures contained in Section 27-69-56 shall control and be followed.

SOURCES: Codes, 1942, § 10193; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1985, ch. 351, § 20; Laws, 2009, 2nd Ex Sess, ch. 87, § 3, eff from and after passage (approved June 30, 2009.)

Editor's Note — Section 27-69-56, which authorized law enforcement officers to seize certain contraband tobacco and provided the procedures for disposal of the seized tobacco and is referenced above, was repealed by Section 1 of Chapter 87, Laws of 2009, effective July 1, 2010.

Cross References — Procedure when goods confiscated, see § 27-69-55.

§ 27-69-55. Procedure when goods are confiscated.

In all cases of seizures of any tobacco, or other property hereafter made as being subject to forfeiture under the provisions of this chapter, which in the opinion of the officer or person making the seizure, is of the appraised value of Twenty-five Dollars ($25.00) or more, the said officer or person shall proceed as follows:

First: He shall cause a list containing a particular description of the tobacco or other property seized to be prepared in duplicate, and an appraisement thereof to be made by three (3) sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of this state, residing within the county wherein the seizure was made. Said list and appraisement shall be properly attested by said officer, or person, and the said appraisers, for which service each of said appraisers shall be allowed the sum of One Dollar ($1.00) per day for not exceeding two (2) days, to be paid as other costs.

Second: If the said tobacco, or other property seized, is believed by the officer making the seizure to be of less value than Twenty-five Dollars ($25.00), no appraisement shall be made.

Third: The officer or person making the seizure shall proceed to give notice thereof for five (5) days, in writing, at three (3) places in the county where the seizure is made. One (1) of the notices shall be posted at the county courthouse; another at the place where the goods were seized; and the other at some public place. The notice shall describe the property seized, and state the time and place and cause of seizure, and give the name and place of residence, if known, of the person from whom the property was seized, and shall require any person claiming it to appear and make such claims in writing, within five (5) days from the date of the first posting of such notice. Such officer or person making the seizure shall also deliver to the person from whom the property was seized, and also to the owner, if known, a copy of said notice.

Fourth: Any person claiming the said property so seized as contraband within the time specified in the notice, may file with the commissioner a claim, in writing, stating his interest in the property seized, and may execute a bond to the State of Mississippi in a penal sum equal to double the value of said property so seized, but in no case shall said bond be less than the sum of One Hundred Dollars ($100.00), with securities to be approved by the clerk of the circuit court in the county in which the property is seized, conditioned that in the case of condemnation of the property so seized, the obligor shall pay to the State of Mississippi the full value of the property so seized, and all costs and expenses of the proceedings to obtain such condemnation, including a reasonable attorney's fee. And upon the delivery of such bond to the commissioner, he shall transmit the same with the duplicate list or description of the property seized to the county attorney of the county, or the district attorney of the district in which such seizure was made, and the said county attorney, or district attorney, as the case may be, shall prosecute the case to secure the forfeiture of said property in the court having jurisdiction. Upon the filing of the bond aforesaid, the said property shall be delivered to the claimant pending the outcome of the case, provided he shall at once affix the required stamps on cigarettes or pay the tax due on other tobacco products.

Fifth: If no claim is interposed, and no bond given within the time above specified, such property shall be forfeited without further proceedings, and the same shall be sold as herein provided, and the proceeds of the sale, when received by the commissioner, shall be paid into the State Treasury as are other funds collected, provided, that in seizures of property of less value than Twenty-five Dollars ($25.00), the same may be advertised with other quantities at Jackson by the commissioner and disposed of as hereinabove provided.

Sixth: In proceedings to secure a confiscation of the property hereinbefore mentioned, where the value of the goods seized at one time does not exceed the amount provided in Section 9-11-9, the justice court judge of the county where the property is seized shall have jurisdiction to try the cause. Where the value of the property seized at one time is in excess of the amount provided in Section 9-11-9, then the circuit court of the county where the property is seized shall have jurisdiction to try the cause; provided, that in counties having a county court, the county court shall have jurisdiction concurrent with the circuit court, and with the justice court where the value of the property seized does not exceed One Thousand Dollars ($1,000.00).

The proceedings against property seized according to the provisions of this chapter shall be considered a proceeding in rem unless otherwise herein provided.

Within ten (10) days after filing the bond provided for in paragraph fourth hereof, the claimant shall file a petition in the court having jurisdiction of said cause, which shall stand for a declaration, and the commissioner, or other party authorized to prosecute the confiscation of said property, shall plead to it as if it were an ordinary action at law, and the same rules of pleading and proceeding applicable to actions in the circuit court shall be observed in this action, and all issues made by the pleadings shall be tried and disposed of as other actions in the circuit court, and the judgment of the circuit court shall be framed to meet the circumstances of the case and the cost shall be adjudged as in other actions; provided, however, neither the state, nor the commissioner, nor any other person representing the state, shall be liable for the cost in the event the court shall not confiscate the property in controversy.

The seizure, forfeiture and sale of contraband goods under this section and Section 27-69-53 is supplemental and in addition to the seizure, forfeiture and sale of contraband tobacco provided for in Section 27-69-56. Where a basis exists under both this section and Section 27-69-53 and under Section 27-69-56 for the seizure, forfeiture and sale of the same contraband goods, such actions can proceed simultaneously. Where such simultaneous seizure, forfeiture and sale is undertaken and there is a conflict between the procedures contained in this section and Section 27-69-53 and those contained in Section 27-69-56, the procedures contained in Section 27-69-56 shall control and be followed.

SOURCES: Codes, 1942, § 10194; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1981, ch. 471, § 48; Laws, 1985, ch. 351, § 21; Laws, 2009, 2nd Ex Sess, ch. 87, § 4, eff from and after passage (approved June 30, 2009.)

Editor's Note — Section 27-69-56, which authorized law enforcement officers to seize certain contraband tobacco and provided the procedures for disposal of the seized tobacco and is referenced above, was repealed by Section 1 of Chapter 87, Laws of 2009, effective July 1, 2010.

Cross References — Civil jurisdiction of justice court, see § 9-11-9.

Warrant for search and seizure, see § 27-69-59.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2219.

§ 27-69-56. Repealed.

Repealed by Laws of 2009, 2nd Ex Sess, ch. 87, § 1, effective July 1, 2010.

§ 27-69-56. [Laws, 2009, 2nd Ex Sess, ch. 87, § 1, eff from and after passage (approved June 30, 2009.)]

Editor's Note — Former § 27-69-56 authorized law enforcement officers to seize certain contraband tobacco and provided procedures for disposal of the seized tobacco.

§ 27-69-57. Commissioner may compromise confiscation.

The commissioner may, in his discretion, return any tobacco confiscated under this chapter, or any part thereof, when it is shown that there was no intention to violate the provisions of this chapter; provided, when any tobacco is confiscated under the provisions of this chapter, the commissioner may, in his discretion, return such goods to the parties from whom they were confiscated, if, and when, such parties shall pay to the commissioner as a penalty an amount equal to the face value of the stamps that should have been affixed to the cigarettes confiscated or pay the excise tax on other tobacco, and, in such cases, no advertisement shall be made or notices posted in connection with said confiscation.

SOURCES: Codes, 1942, § 10195; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1985, ch. 351, § 22, eff from and after June 1, 1985.

§ 27-69-59. Unlawful sale; search and seizure.

When the commissioner has good reason to believe that tobacco is being kept, sold, offered for sale, or given away in violation of this chapter, or regulations issued under authority hereof, he may make affidavit of such fact, describing the place or thing to be searched, before any justice of the peace, mayor of any city, town or village, or county or circuit judge of any county in this state, and such justice of the peace, mayor or county or circuit judge shall issue a search warrant directed to the sheriff or any constable or any police officer in any city, town or village, commanding him to proceed in the day time, or in the night time, to enter by breaking, if necessary, and to diligently search any building, room in a building, outhouses, place, wagon, cart, buggy, motorcycle, motor truck, automobile, water or air craft, or other vehicle as may be designated in the affidavit and search warrant, and to seize such tobacco so possessed and to hold the same until disposed of by law, and to arrest the person or persons in possession or control of the same.

Such writ shall be returnable instanter, or on a day to be stated, and a copy shall be served on the owner or person in possession, if such person be present or readily found.

If upon hearing, or the return of such search warrant, it shall appear that any tobacco unlawfully possessed were seized, the same shall be declared forfeited to this state, and shall be sold as provided in Section 27-69-55 of this chapter.

SOURCES: Codes, 1942, § 10196; Laws, 1932, ch. 92; Laws, 1934, ch. 125.

Editor's Note — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 2221.

§ 27-69-61. Injunction by commissioner.

Any person engaged in the business herein taxed, without a permit, or failing to make the report as herein provided, and pay the taxes as herein provided, may be enjoined, at the instance of the commissioner, from continuing the business of selling tobacco until a permit is obtained, and all reports required by this chapter have been filed, and all taxes due hereunder shall have been paid, together with all penalties for which such person is liable, and such injunction shall be applied for by the attorney for the commissioner, any county attorney, or attorney general, or district attorney, on the request of the commissioner, and a temporary injunction shall be issued upon five (5) days' notice, by any judge authorized by law to issue temporary injunctions.

SOURCES: Codes, 1942, § 10197; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156.

Cross References — Injunctions, generally, see § 11-13-1 et seq.

§ 27-69-63. Damaged stamps.

If any of the stamps sold by the commissioner in accordance with the provisions of this chapter, or any stamps in his possession, shall become damaged to the extent that they cannot be used, then the commissioner shall destroy said stamps. However, he shall first make a list thereof as to the denominations and amounts of said stamps, and shall submit the list and stamps to the state treasurer, and the stamps shall be counted and such lists shall be attested by the state treasurer, and after such verification and attest, said damaged stamps shall be destroyed then and there in the presence of the state treasurer, and the said list of denominations and amounts which have been attested by the state treasurer shall be kept as a permanent record in the office of the commissioner. If such damaged stamps shall have been sold by this state to any dealer under the provisions of this chapter, the commissioner shall exchange new stamps for such damaged stamps and shall dispose of the same as provided in this section.

SOURCES: Codes, 1942, § 10198; Laws, 1932, ch. 92; Laws, 1934, ch. 125.

§ 27-69-65. Commissioner to administer provisions of this chapter.

The commissioner shall administer the provisions of this chapter, and shall have the power to issue rules and regulations not inconsistent with the provisions of this chapter, or of the Constitution of this state, or of the Constitution of the United States.

The commissioner shall enforce the payment of the taxes herein imposed, and he shall have the power without warrant to enter upon the premises of any taxpayer, including any building, store room, vehicle, or place, other than his actual place of residence, used in connection with his business, and to examine, or cause to be examined, any stock of merchandise, books, papers, records or memoranda bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this chapter. It shall be the duty of the commissioner to purchase out of appropriations provided for that purpose, and at the lowest price possible, quality and convenience of delivery being considered, and to keep on hand for sale in his office, or some other safe depository, at all times a sufficient and adequate supply of stamps in requisite denominations.

The commissioner shall keep an accurate account of all stamps coming into his custody, and shall be liable for the face value of all stamps sold, shipped, or otherwise disposed of by him; provided, that the commissioner shall sell the stamps only to dealers holding permits issued under the provisions of this chapter. The moneys received from the sale of said stamps shall be paid into the state treasury, as provided by law. And in case of dealers, proper accounting shall be deemed to have been made when the prescribed application, together with acceptable remittance for the amount of the stamps to be used, have been received and accepted by the commissioner; and in the case of the commission, the liability shall extend to the sureties on his bond and be recoverable as such.

SOURCES: Codes, 1942, § 10199; Laws, 1932, ch. 92; Laws, 1934, ch. 125.

§ 27-69-67. Peace officers to assist in enforcement.

It is hereby made the duty of the several peace officers of the state, counties, municipalities and county districts, to assist the commissioner, and his authorized agents, deputies, and representatives, in the enforcement of the provisions of this chapter. Any sheriff, deputy sheriff, constable, or police officer, when called upon by the commissioner, or his agent, or representative, shall lend every assistance possible under the authority of his office, to apprehend any person suspected of violating any of the provisions of this chapter, and to discover any act of violation thereof; to take proper steps for seizure of contraband tobacco, and prosecute criminally any person found engaged in the violation of any provision of said chapter. When any penalty imposed under the provisions of this chapter shall be collected as a result of, or through the cooperation, or aid of any such peace officer, the commissioner is hereby authorized to pay such officer fifty percent (50%) of the penalty collected from such offender, as compensation for the service performed, which shall be in addition to such usual fees as such officer may be entitled to under the criminal laws of the state.

SOURCES: Codes, 1942, § 10200; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156.

Cross References — General duties of constables, see § 19-19-5.

Duty of sheriff to keep peace, see § 19-25-67.

Municipal police or night marshals, see § 21-21-3.

§ 27-69-69. Municipalities may impose privilege tax upon dealers in cigarettes.

Any municipality within this state, in which any business licensed under the provisions of this chapter, may be carried on, shall have the right to impose upon persons engaged in such business, an annual privilege tax of not more than fifty percent (50%) of the permit fee imposed by Section 27-69-7 of this chapter; provided, however, that no person engaged in the wholesale sale, or distribution of cigars, cigarettes or smoking tobacco taxed by this chapter shall be taxed by any municipality other than that in which the warehouse or wholesale business is located.

SOURCES: Codes, 1942, § 10201; Laws, 1936, ch. 156.

Cross References — Limitation on municipal levy of privilege taxes, see §§ 27-15-7, 27-17-5.

§ 27-69-71. Agents of the commissioner.

The commissioner shall appoint such agents as are authorized by law to administer the provisions of this chapter, and all such agents shall have for identification purposes, a badge prescribed by the commissioner, together with proper credentials signed by him and attested by the secretary of the commission.

It shall be unlawful for any person to falsely represent himself as an agent of the commissioner, or to have in his possession any badge, any device or certificate of authority, unless he be duly appointed and an acting agent of the commissioner in the administration of this chapter, and such person violating this provision, shall be guilty of a misdemeanor.

All agents of the commissioner shall be authorized to arrest any person found in possession of, or transporting any tobacco subject to confiscation, and upon making an arrest shall take the offender before a proper officer without unnecessary delay, for examination of his case.

SOURCES: Codes, 1942, § 10202; Laws, 1932, ch. 92; Laws, 1934, ch. 125.

Cross References — Employees of State Tax Commission, see § 27-3-13.

Arrests, generally, see § 99-3-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-69-73. Rules and regulations.

The commissioner is hereby empowered to make such rules and regulations, and provide such procedural measures, in cooperation with the state auditor, as shall bring into effect the purposes of this chapter.

SOURCES: Codes, 1942, § 10180; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, Ex. Sess, ch. 22; Laws, 1948, ch. 460; Laws, 1955, Ex. Sess, chs. 113, § 2, 116, §§ 1, 2, eff. March 1, 1955.

Editor's Note — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

§ 27-69-75. Payment into treasury.

All taxes levied by this chapter shall be payable to the commissioner in cash, or by personal check, cashier's check, bank exchange, post-office money order or express money order, and shall be deposited by the commissioner in the State Treasury on the same day collected. No remittance other than cash shall be a final discharge of liability for the tax herein assessed and levied, unless and until it has been paid in cash to the commissioner.

All tobacco taxes collected, including tobacco license taxes, shall be deposited into the State Treasury to the credit of the General Fund.

Wholesalers who are entitled to purchase stamps at a discount, as provided by Section 27-69-31, may have consigned to them, without advance payment, such stamps, if and when such wholesaler shall give to the commissioner a good and sufficient bond executed by some surety company authorized to do business in this state, conditioned to secure the payment for the stamps so consigned. The commissioner shall require payment for such stamps not later than thirty (30) days from the date the stamps were consigned.

SOURCES: Codes, 1942, § 10203; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1972, ch. 488, § 2; Laws, 1984, ch. 478, § 25; Laws, 1987, ch. 322, § 29, eff from and after July 1, 1987 (Governor's veto overridden by Legislature on March 12, 1987).

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides as follows:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Cross References — Requirement that all state officials report collections and pay same into state treasury, see § 7-9-21.

§ 27-69-77. Records of commissioner.

At the end of each month, the State Auditor shall carefully check the books and records of the commissioner and his accounts with any bank or banks, and shall verify the amounts paid into the state treasury, in so far as they relate to the collection of this privilege tax; and any duty herein required of the state auditor may be performed by any clerk in his office, designated by the state auditor for that purpose.

SOURCES: Codes, 1942, § 10204; Laws, 1932, ch. 92; Laws, 1934, ch. 125.

Editor's Note — Transfer of functions of State Auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

§ 27-69-79. Nonresident tobacco dealers; state reciprocity as to requirements for doing business.

Nonresident tobacco dealers obtaining a license or permit as provided by Section 27-69-7 in addition to meeting the requirements as provided by the Tobacco Tax Law, Chapter 69, Title 27, Mississippi Code of 1972, shall comply with any additional requirements imposed by their state of domicile on Mississippi dealers licensed to do business in that state pertaining to shipments, storage, license fees or any other requirements other than payment of excise taxes.

SOURCES: Laws, 1987, ch. 357, § 1, eff from and after June 1, 1987.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Commerce § 84.

CJS. 81A C.J.S., States §§ 57, 58.

CHAPTER 70

Nonsettling-Manufacturer Cigarette Fee

Sec.

27-70-1. Purpose.
27-70-3. Definitions.
27-70-5. Tobacco equity tax; exemption; applicability; tax to be in addition to any other tax; tax imposed, levied and assessed on distributor of cigarettes; credit for tax paid on cigarettes returned to distributor.
27-70-7. Repealed.
27-70-9. Report requirement; contents; enforcement.
27-70-11 through 27-70-17. Repealed
27-70-19. Penalties for noncompliance with chapter; applicability of Mississippi sales tax law to this chapter.
27-70-21. Repealed.
27-70-23. Disclosure of information to determine compliance with and enforce chapter.

§ 27-70-1. Purpose.

The purpose of this chapter is to:

(a) Prevent nonsettling manufacturers from undermining this state's policy of discouraging underage smoking by offering cigarettes at prices that are substantially below the prices of cigarettes of other manufacturers;

(b) Protect the tobacco settlement agreement, and funding, which has been reduced because of the growth of sales of nonsettling-manufacturer cigarettes, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of nonsettling-manufacturer cigarettes;

(c) Provide funding to enforce and administer this chapter and any legislation relating to nonsettling manufacturers; and

(d) Provide funding for any other purpose the Legislature determines.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 1, eff from and after July 1, 2009.

§ 27-70-3. Definitions.

As used in this chapter:

(a) "Brand family" means each style of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings" and "100s." The term includes any style of cigarette products that has a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes.

(b) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use. The term includes:

(i) A roll of tobacco wrapped in paper or another substance that does not contain tobacco;

(ii) Tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(iii) A roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(c) "Commissioner" means the Commissioner of Revenue of the Department of Revenue and his authorized agents and employees.

(d) "Mail" means placing the document or item referred to in first-class United States mail, postage prepaid, addressed to the person to whom the document or item is to be sent at the last known address of that person.

(e) "Manufacturer" means a person that manufactures, fabricates or assembles cigarettes for sale or distribution. For purposes of this chapter, the term includes a person that is the first importer into the United States of cigarettes manufactured outside the United States.

(f) "Tobacco settlement agreement" means any settlement agreement entered into by this state and one or more cigarette manufacturers in the case of *Mike Moore, Attorney General, ex rel. State of Mississippi v. The American Tobacco Company et al.,* Chancery Court of Jackson County, Mississippi, Cause No. 94-1429, and all subsequent amendments thereto.

(g) "Distributor" shall have the same meaning ascribed to that term in Section 27-69-3.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 2; Laws, 2011, ch. 520, § 1, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:
"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

§ 27-70-5. Tobacco equity tax; exemption; applicability; tax to be in addition to any other tax; tax imposed, levied and assessed on distributor of cigarettes; credit for tax paid on cigarettes returned to distributor.

(1)(a) In addition to the tax imposed under Section 27-69-13, and except as provided by subsection (2) of this section, there is imposed a tobacco equity tax in the amount of One and Thirty-five One Hundredths Cent ($0.0135) per cigarette on all cigarettes subject to the tax imposed under Section 27-69-13.

(b) On July 1 of each year, the tax prescribed by subsection (1) of this section shall increase by the greater of:

(i) Three percent (3%); or

(ii) The percentage increase in the most recent annual revised Consumer Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

(c) The revenue collected from the tax imposed by this section shall be deposited into the State General Fund.

(d) The cigarettes manufactured by any manufacturer which is a party to the tobacco settlement agreement shall be exempt from the imposition of the tobacco equity tax provided for herein.

(2) The tax imposed by this chapter does not apply to cigarettes that are sold, purchased or otherwise distributed in this state for sale outside of this state. A person may not transport or cause to be transported from this state such cigarettes for retail sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or by paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold; however, a person shall not be required to affix a tax stamp of another state or pay the excise tax of another state prior to transporting the cigarettes out of this state if the other state prohibits that action or if the cigarettes are being sold to a wholesaler licensed by that state.

(3) The tax imposed by this chapter is in addition to any other privilege, license, fee, assessment or tax required or imposed by state law, including, but not limited to, the taxes levied by Section 27-69-13.

(4) The tax imposed by this chapter is imposed, levied and assessed on each distributor of cigarettes. The tax shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the stamp is required to be affixed to the cigarettes under the Tobacco Tax Law. The distributor shall make a return showing the number of such cigarettes, the brand family, and the manufacturer. The return shall also include the quantity of cigarettes, by brand family, transported or caused to be transported outside of Mississippi in the preceding month as well as the name and address of the recipient of the cigarettes transported outside of Mississippi.

(5) The distributor is eligible for a credit if cigarettes for which the distributor had previously paid the tax under this chapter were returned to the distributor.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 3; Laws, 2011, ch. 520, § 2, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:
"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to

Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Cross References — Tobacco Tax Law, see § 27-69-1 et seq.

JUDICIAL DECISIONS

1. Constitutionality.
2. Attorney's fees.

1. Constitutionality.

Miss. Code Ann. § 27-70-5 (2010) violated the Commerce Clause, U.S. Const. Art. I, § 8, cl. 3, as it was internally inconsistent since: (1) if another state enacted an identical law and a distributor obtained cigarettes in Mississippi for sale outside of Mississippi, then Mississippi would impose a fee on a transaction and the other state would impose a fee on a transaction; (2) if the cigarettes acquired by the Mississippi distributor were sold intrastate, they would be subject to only one fee; and (3) if another state enacted an identical statute, interstate commerce would bear a burden that intrastate commerce would not. Commonwealth Brands v. Morgan, 110 So. 3d 752 (Miss. 2013).

2. Attorney's fees.

Appellants were not entitled to attorney's fees under 42 U.S.C.S. § 1988, even though they correctly alleged that Miss. Code Ann. 27-70-5 (2010) violated the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, as they had an adequate remedy, which they invoked, declaratory relief under Miss. R. Civ. P. 57; under the Tax Injunction Act, 28 U.S.C.S. § 1341, the constitutionality of a state tax could not be challenged under 42 U.S.C.S. § 1983 in state court if an adequate remedy was available under state law. Commonwealth Brands v. Morgan, 110 So. 3d 752 (Miss. 2013).

§ 27-70-7. Repealed.

Repealed by Laws of 2011, ch. 520, § 6, effective from and after July 1, 2011.

§ 27-70-7. [Laws, 2009, 2nd Ex Sess, ch. 85, § 4, eff from and after July 1, 2009.]

Editor's Note — Former § 27-70-7 imposed a fee on nonsettling cigarette manufacturers.

Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

§ 27-70-9. Report requirement; contents; enforcement.

(1) A distributor required to file a monthly report under Section 27-69-35, shall, in addition to the information required by that section, include in the report the following information:

(a) The number and denominations of stamps affixed to individual packages of nonsettling-manufacturer cigarettes during the preceding month;

(b) The number of individual packages of nonsettling-manufacturer cigarettes sold or purchased in this state or otherwise distributed in this state for sale in the United States; and

(c) Any other information the commissioner considers necessary or appropriate to determine the amount of the fee imposed by this chapter or to enforce this chapter.

(2) The information required by subsection (1)(a) and (b) of this section must be itemized for each place of business and by manufacturer and brand family.

(3) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the commissioner a report required under the Tobacco Tax Law. The commissioner may also require that this report be filed electronically as provided under Section 27-3-83.

(4) The information obtained from the distributors under subsection (1) of this section regarding nonsettling-manufacturer cigarettes of a particular nonsettling manufacturer may be disclosed by the commissioner to that particular nonsettling manufacturer and/or to the authorized representative of the nonsettling manufacturer.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 5, eff from and after July 1, 2009.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Cross References — Tobacco Tax Law, see § 27-69-1 et seq.

§§ 27-70-11 through 27-70-17. Repealed.

Repealed by Laws of 2011, ch. 520, § 6, effective from and after July 1, 2011.

§ 27-70-11. [Laws, 2009, 2nd Ex Sess, ch. 85, § 6, eff from and after July 1, 2009.]

§ 27-70-13. [Laws, 2009, 2nd Ex Sess, ch. 85, § 7, eff from and after July 1, 2009.]

§ 27-70-15. [Laws, 2009, 2nd Ex Sess, ch. 85, 8, eff from and after July 1, 2009.]

§ 27-70-17. [Laws, 2009, 2nd Ex Sess, ch. 85, § 9, eff from and after July 1, 2009.]

Editor's Note — Former § 27-70-11 provided for the computation, rate of increase and notice of fee to manufacturers.

Former § 27-70-13 required manufacturers to certify their compliance with the fee requirement and required the Attorney General to develop and maintain a directory of certified cigarette manufacturers.

Former § 27-70-15 required certain cigarette manufacturers to prepay a fee.

Former § 27-70-17 required certain cigarette manufacturers to register with the Attorney General.

Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

§ 27-70-19. Penalties for noncompliance with chapter; applicability of Mississippi sales tax law to this chapter.

(1) If any distributor subject to the provisions of this chapter shall be found to have failed to properly report or pay the tax required under this chapter, or to have violated any of the provisions of this chapter or any rules or regulations promulgated by the commissioner under the authority of this chapter, there shall be collected from such distributor, in addition to the tax that may be due, a penalty of One Thousand Dollars ($1,000.00) per violation, and the commissioner or his duly authorized representative may make immediate demand upon the distributor for the payment of all such taxes and penalties.

(2) If there is a second violation by a distributor of this chapter or any rule or regulation promulgated by the commissioner under the authority of this chapter, the commissioner, in addition to any other penalty, may revoke any permit which may have been issued to the distributor.

(3) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of that law, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for the taxes under this chapter, and the commissioner shall exercise all the power and authority and perform all duties with respect to taxpayers under this chapter as are provided under the Mississippi Sales Tax Law, except where there is a conflict, in which case this chapter shall control.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 10; Laws, 2011, ch. 520, § 3, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Cross References — Mississippi Sales Tax Law, see § 27-65-1 et seq.

Tobacco Tax Law, see § 27-69-1 et seq.

§ 27-70-21. Repealed.

Repealed by Laws of 2011, ch. 520, § 6, effective from and after July 1, 2011.

§ 27-70-21. [Laws, 2009, 2nd Ex Sess, ch. 85, § 11, eff from and after July 1, 2009.]

Editor's Note — Former § 27-70-21 required certain cigarette manufacturers to register with the Attorney General.

Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

§ 27-70-23. Disclosure of information to determine compliance with and enforce chapter.

The commissioner is authorized to disclose to the Attorney General any information or document received or generated under this chapter and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this chapter. The commissioner and Attorney General shall share with each other the information and documents received under this chapter, and may share the information and/or documents with other federal or state agencies but only for purposes of enforcement of this chapter or the corresponding laws of other states.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 12, eff from and after July 1, 2009.

CHAPTER 71

Alcoholic Beverage Taxes

Article 1. Alcoholic Beverages 27-71-1
Article 2. Surcharge for Construction of ABC Warehouse. [Repealed]
Article 3. Light Wines and Beer 27-71-301
Article 5. Breweries 27-71-501

ARTICLE 1.

ALCOHOLIC BEVERAGES.

SEC.
27-71-1. Administration of article.
27-71-3. Definitions.
27-71-5. Annual privilege taxes and other fees; permits; penalties; prohibition of alcoholic beverages in public places.
27-71-7. Excise taxes; markup for benefit of Alcoholism Treatment and Rehabilitation Fund and Mental Health Programs Funds.
27-71-9. Common carriers.
27-71-11. Wholesale operations.
27-71-13. Purchases direct from manufacturer; exceptions.
27-71-15. Transportation.
27-71-17. Penalty for counterfeiting or reuse of labels.
27-71-19. Repealed.
27-71-21. Bond required of manufacturers, retailers; alternative cash or security deposit.
27-71-23. Violations of article.
27-71-25. Records to be maintained.
27-71-27. Examination of records.
27-71-29. Payment of taxes into treasury.
27-71-31. Construction of article.

§ 27-71-1. Administration of article.

This article and the terms and provisions hereof shall be administered and enforced by the Department of Revenue, hereinafter referred to as the "State Tax Commission," the "commission" or the "department".

SOURCES: Codes, 1942, § 10265-101; Laws, 1966, ch. 649, § 1; Laws, 2009, ch. 492, § 111, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:
"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the

effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.
Taxation of light wine and beer, see § 27-71-301 et seq.
Local option alcoholic beverage control law, see § 67-1-1 et seq.
Sale of light wine, beer and other alcoholic beverages, see § 67-3-1 et seq.

§ 27-71-3. Definitions.

Except as otherwise indicated or required by the context hereof, all words and phrases used herein shall have the same meanings as are ascribed to and provided for them by the Local Option Alcoholic Beverage Control Law, Chapter 1 of Title 67, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10265-102; Laws, 1966, ch. 649, § 2, eff from and after July 1, 1966.

Cross References — Local option alcoholic beverage control law, see § 67-1-1 et seq.

§ 27-71-5. Annual privilege taxes and other fees; permits; penalties; prohibition of alcoholic beverages in public places.

(1) Upon each person approved for a permit under the provisions of the Alcoholic Beverage Control Law and amendments thereto, there is levied and imposed for each location for the privilege of engaging and continuing in this state in the business authorized by such permit, an annual privilege license tax in the amount provided in the following schedule:

(a) Except as otherwise provided in this subsection (1), manufacturer's permit, Class 1, distiller's and/or rectifier's $4,500.00

(b) Manufacturer's permit, Class 2, wine manufacturer $1,800.00

(c) Manufacturer's permit, Class 3, native wine manufacturer per ten thousand (10,000) gallons or part thereof produced .... $ 10.00

(d) Native wine retailer's permit .... $ 50.00

(e) Package retailer's permit, each .... $ 900.00

(f) On-premises retailer's permit, except for clubs and common carriers, each .... $ 450.00

(g) On-premises retailer's permit for wine of more than five percent (5%) alcohol by weight, but not more than twenty-one percent (21%) alcohol by weight, each .... $ 225.00

(h) On-premises retailer's permit for clubs .... $ 225.00

(i) On-premises retailer's permit for common carriers, per car, plane, or other vehicle .... $ 120.00

(j) Solicitor's permit, regardless of any other provision of law, solicitor's permits shall be issued only in the discretion of the department . $ 100.00

(k) Filing fee for each application except for an employee identification card	$	25.00
(*l*) Temporary permit, Class 1, each	$	10.00
(m) Temporary permit, Class 2, each	$	50.00
(n)(i) Caterer's permit	$	600.00
(ii) Caterer's permit for holders of on-premises retailer's permit	$	150.00
(o) Research permit	$	100.00
(p) Temporary permit, Class 3 (wine only)	$	10.00
(q) Special service permit	$	225.00
(r) Merchant permit	$	225.00
(s) Temporary wine charitable auction permit	$	10.00
(t) Event venue retailer's permit	$	225.00
(u) Temporary theatre permit, each	$	10.00
(v) Charter ship operator's permit	$	100.00

If a person approved for a manufacturer's permit, Class 1, distiller's permit produces a product with at least fifty-one percent (51%) of the finished product by volume being obtained from alcoholic fermentation of grapes, fruits, berries, honey and/or vegetables grown and produced in Mississippi, and produces all of the product by using not more than one (1) still having a maximum capacity of one hundred fifty (150) liters, the annual privilege license tax for such a permit shall be Ten Dollars ($10.00) per ten thousand (10,000) gallons or part thereof produced. Bulk, concentrated or fortified ingredients used for blending may be produced outside this state and used in producing such a product.

In addition to the filing fee imposed by paragraph (k) of this subsection, a fee to be determined by the Department of Revenue may be charged to defray costs incurred to process applications. The additional fees shall be paid into the State Treasury to the credit of a special fund account, which is hereby created, and expenditures therefrom shall be made only to defray the costs incurred by the Department of Revenue in processing alcoholic beverage applications. Any unencumbered balance remaining in the special fund account on June 30 of any fiscal year shall lapse into the State General Fund.

All privilege taxes imposed by this section shall be paid in advance of doing business. The additional privilege tax imposed for an on-premises retailer's permit based upon purchases shall be due and payable on demand.

(2)(a) There is imposed and shall be collected from each permittee, except a common carrier, solicitor or a temporary permittee, by the department, an additional license tax equal to the amounts imposed under subsection (1) of this section for the privilege of doing business within any municipality or county in which the licensee is located.

(b)(i) In addition to the tax imposed in paragraph (a) of this subsection, there is imposed and shall be collected by the department from each permittee described in subsection (1)(f), (g), (h), (m) and (t) of this section, an additional license tax for the privilege of doing business within any municipality or county in which the licensee is located in the amount of

Two Hundred Twenty-five Dollars ($225.00) on purchases exceeding Five Thousand Dollars ($5,000.00) and Two Hundred Twenty-five Dollars ($225.00) for each additional purchase of Five Thousand Dollars ($5,000.00), or fraction thereof.

(ii) In addition to the tax imposed in paragraph (a) of this subsection, there is imposed and shall be collected by the department from each permittee described in subsection (1)(n) and (r) of this section, an additional license tax for the privilege of doing business within any municipality or county in which the licensee is located in the amount of Two Hundred Fifty Dollars ($250.00) on purchases exceeding Five Thousand Dollars ($5,000.00) and Two Hundred Twenty-five Dollars ($225.00) for each additional purchase of Five Thousand Dollars ($5,000.00), or fraction thereof.

(iii) Any person who has paid the additional privilege license tax imposed by this paragraph, and whose permit is renewed, may add any unused fraction of Five Thousand Dollars ($5,000.00) purchases to the first Five Thousand Dollars ($5,000.00) purchases authorized by the renewal permit, and no additional license tax will be required until purchases exceed the sum of the two (2) figures.

(c) If the licensee is located within a municipality, the department shall pay the amount of additional license tax collected under this section to the municipality, and if outside a municipality the department shall pay the additional license tax to the county in which the licensee is located. Payments by the department to the respective local government subdivisions shall be made once each month for any collections during the preceding month.

(3) When an application for any permit, other than for renewal of a permit, has been rejected by the department, such decision shall be final. Appeal may be made in the manner provided by Section 67-1-39. Another application from an applicant who has been denied a permit shall not be reconsidered within a twelve-month period.

(4) The number of permits issued by the department shall not be restricted or limited on a population basis; however, the foregoing limitation shall not be construed to preclude the right of the department to refuse to issue a permit because of the undesirability of the proposed location.

(5) If any person shall engage or continue in any business which is taxable under this section without having paid the tax as provided in this section, the person shall be liable for the full amount of the tax plus a penalty thereon equal to the amount thereof, and, in addition, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term of not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(6) It shall be unlawful for any person to consume alcoholic beverages on the premises of any hotel restaurant, restaurant, club or the interior of any public place defined in Chapter 1, Title 67, Mississippi Code of 1972, when the owner or manager thereof displays in several conspicuous places inside the

establishment and at the entrances of establishment a sign containing the following language: NO ALCOHOLIC BEVERAGES ALLOWED.

SOURCES: Codes, 1942, § 10265-103; Laws, 1966, ch. 649, § 3; Laws, 1976, ch. 467, § 9; Laws, 1984, ch. 425, § 2; Laws, 1986, ch. 381; Laws, 1988, ch. 302, § 2; Laws, 1989, ch. 484, § 2; Laws, 1994, ch. 538, § 1; Laws, 2004, ch. 479, § 1; Laws, 2006, ch. 529, § 1; Laws, 2009, ch. 465, § 3; Laws, 2014, ch. 527, § 2; Laws, 2015, ch. 357, § 1; Laws, 2015, ch. 462, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of Chapter 357, Laws of 2015, effective from and after July 1, 2015 (approved March 17, 2015), amended this section. Section 2 of Chapter 462, Laws of 2015, effective from and after July 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 462, Laws of 2015, which contains language that specifically provides that it supersedes § 27-71-5 as amended by Chapter 357, Laws of 2015.

Cross References — State Treasurer generally, see § 7-9-1 et seq.

Department of Revenue generally, see § 27-3-1 et seq.

Sales tax on wholesale sales of beer, see § 27-65-17.

Local option alcoholic beverage control law, see § 67-1-1 et seq.

Native wines generally, see § 67-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

Subsection (e) of this section [Code 1942, § 10265-103] does not seek to impose a privilege tax on one unlawfully engaging in the whisky business, but makes it a crime for one to engage unlawfully in such business, and provides punishment for the crime and also a penalty-not a tax-for having unlawfully operated. Morris v. State, 206 So. 2d 832 (Miss. 1968).

A defendant engaged in the sale of intoxicating liquor in a rural area where, under no circumstances, could she obtain a license or permit to engage in that activity was properly found guilty of violating this section [Code 1942, § 10265-103], for subsection (e) is not limited to a permittee or licensee, but specifically applies to "any person." Morris v. State, 206 So. 2d 832 (Miss. 1968).

It was the legislative intent to make separate provision for the criminal prosecution of offenders and the recovery of the tax and penalty, and the trial judge erred in imposing sentence to award judgment against the defendant for the tax and penalty in addition to imposing a sentence of fine and imprisonment. Northcutt v. State, 206 So. 2d 824 (Miss. 1967).

Neither the number of sales nor the length of time in which the proprietor of an establishment may engage or continue unlawfully in business is controlling in determining whether the defendant was guilty of violating this section [Code 1942, § 10265-103]. Northcutt v. State, 206 So. 2d 824 (Miss. 1967).

Where, prior to the empaneling of a jury, the defendant failed to interpose a demurrer to an indictment charging a violation of the tax provisions of the Local Option Alcoholic Beverage Control Law but which failed to charge that the defendant "engaged or continued" in the business of selling intoxicating liquor without paying the required tax, objection to the sufficiency of the indictment cannot be raised for the first time on appeal. Northcutt v. State, 206 So. 2d 824 (Miss. 1967).

On the trial of a defendant charged with the sale of intoxicating liquor without paying the required tax, evidence of the discovery of empty whisky cases on his premises should not have been admitted where their discovery resulted from an illegal search. Northcutt v. State, 206 So. 2d 824 (Miss. 1967).

Where the evidence showed without dispute that the defendant was the proprietor of a place of business which was open and doing business, and that having first supplied "setups" for the preparation of drinks, sold across the counter to a customer a bottle of whisky, a commodity upon which the tax is levied, the jury was warranted in finding defendant was engaged in the business of selling whisky. Northcutt v. State, 206 So. 2d 824 (Miss. 1967).

ATTORNEY GENERAL OPINIONS

The owner of a package liquor store is not required to obtain a local privilege license, but is required to obtain a state license; since a privilege tax is imposed on any business, defined as activities having the object of gain, profit, or advantage, or any trade, calling, profession and things occupying the time, attention and labor of individuals for the purpose of livelihood, the owner of a nursing/personal care home operated for profit would be required to obtain a license. Richardson, January 9, 1998, A.G. Op. #98-0774.

RESEARCH REFERENCES

ALR. Liquor license as subject to execution or attachment. 40 A.L.R.4th 927.

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 167 et seq.

CJS. 48A C.J.S., Intoxicating Liquors § 245 et seq.

§ 27-71-7. Excise taxes; markup for benefit of Alcoholism Treatment and Rehabilitation Fund and Mental Health Programs Funds.

(1) There is hereby levied and assessed an excise tax upon each case of alcoholic beverages sold by the commission to be collected from each retail licensee at the time of sale in accordance with the following schedule:

(a) Distilled spirits ....$2.50 per gallon
(b) Sparkling wine and champagne ....$1.00 per gallon
(c) Other wines, including native wines ....$.35 per gallon

(2)(a) In addition to the tax levied by subsection (1) of this section, and in addition to any other markup collected, the Alcoholic Beverage Control Division shall collect a markup of three percent (3%) on all alcoholic beverages, as defined in Section 67-1-5, Mississippi Code of 1972, which are sold by the division. The proceeds of the markup shall be collected by the division from each purchaser at the time of purchase.

(b) Until June 30, 1987, the revenue derived from this three percent (3%) markup shall be deposited by the division in the State Treasury to the credit of the "Alcoholism Treatment and Rehabilitation Fund," a special fund which is hereby created in the State Treasury, and shall be used by the Division of Alcohol and Drug Abuse of the State Department of Mental Health and public or private centers or organizations solely for funding of treatment and rehabilitation programs for alcoholics and alcohol abusers which are sponsored by the division or public or private centers or organizations in such amounts as the Legislature may appropriate to the division for use by the division or public or private centers or organizations for such programs. Any tax revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the General Fund. It is the intent of the Legislature that the State Department of Mental Health shall continue to seek funds from other sources and shall use the funds appropriated for the purposes of this section and Section 27-71-29 to match all federal funds which may be available for alcoholism treatment and rehabilitation.

From and after July 1, 1987, the revenue derived from this three percent (3%) markup shall be deposited by the division in the State Treasury to the credit of the "Mental Health Programs Fund," a special fund which is hereby created in the State Treasury and shall be used by the State Department of Mental Health for the service programs of the department. Any revenue in the "Alcoholism Treatment and Rehabilitation Fund" which is not encumbered at the end of Fiscal Year 1987 shall be deposited to the credit of the "Mental Health Programs Fund."

SOURCES: Codes, 1942, § 10265-104; Laws, 1966, ch. 649, § 4; Laws, 1976, ch. 467, § 10; Laws, 1977, ch. 498, § 1; Laws, 1978, ch 438, § 1; Laws, 1979, ch. 474; Laws, 1981, ch. 411, § 1; Laws, 1985, ch. 322, § 1; Laws, 1986, ch. 500, § 8; Laws, 1992, ch. 456, § 1, eff from and after July 1, 1992.

Cross References — Local option alcoholic beverage control law, see § 67-1-1.
Native wines generally, see § 67-5-1 et seq.
Excise tax on sales by producers of native wine, see § 67-5-13.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 167 et seq.

CJS. 48A C.J.S., Intoxicating Liquors § 250.

§ 27-71-9. Common carriers.

The commission may promulgate regulations authorizing persons holding on-premises retailer's permits for common carriers, as provided herein, to file periodic reports and pay a tax based upon the value of alcoholic beverages sold while in this state, in lieu of purchasing all such alcoholic beverages from the commission. Such tax shall not be less than an amount equivalent to the gross profit plus all taxes that would have been derived from the sale of a like quantity of alcoholic beverages by the commission.

SOURCES: Codes, 1942, § 10265-105; Laws, 1966, ch. 649, § 5, eff from and after July 1, 1966.

§ 27-71-11. Wholesale operations.

The commission shall from time to time by resolution request the State Bond Commission to provide sufficient funds required to maintain an adequate alcoholic beverage inventory. Said funds shall be provided under the provisions of Chapter 557, Laws of 1966.

The commission shall add to the cost of all alcoholic beverages a markup of twenty-seven and one-half percent (27½%), inclusive of the three percent (3%) markup imposed by Section 27-71-7(2).

The commission shall sell alcoholic beverages at uniform prices throughout the state.

SOURCES: Codes, 1942, § 10265-106; Laws, 1966, ch. 649, § 6; Laws, 1985, ch. 351, § 25, eff from and after May 1, 1985.

JUDICIAL DECISIONS

1. In general.

As applied to liquor sales to nonappropriated fund activities at military installations subject to concurrent federal and state jurisdiction, a regulation of a state tax commission requiring out-of-state liquor distillers and suppliers to collect from military installations within the state, and remit to the Commission, a tax in the form of a wholesale markup on liquor sold to the installations as unconstitutional as imposing a tax on instrumentalities of the United States, where the legal incidents of a tax is upon such instrumentalities, and not on the suppliers. United States v. Mississippi Tax Comm'n, 421 U.S. 599, 95 S. Ct. 1872, 44 L. Ed. 2d 404 (1975).

Wholesale markup applied to liquor sold to federal military installations in Mississippi constituted a sales tax, the legal incidence of which rested upon instrumentalities of the United States as the purchasers, and therefore the markup was unconstitutional as a tax imposed upon the United States and its instrumentalities. Since the legal incidence of the tax was upon the United States, the federal immunity with respect to sales of liquor to the two exclusively federal enclaves was preserved by § 107(a) of the Buck Act (4 USCS §§ 105-110); The Twenty-First Amendment did not abolish federal immunity with respect to taxes on the sales of liquor to the concurrent jurisdiction bases. United States v. Mississippi Tax Comm'n, 421 U.S. 599, 95 S. Ct. 1872, 44 L. Ed. 2d 404 (1975).

§ 27-71-13. Purchases direct from manufacturer; exceptions.

The commission shall purchase directly from the manufacturer, except under the following conditions:

(a) Foreign brands which are not readily obtainable directly from the manufacturer.

(b) When the commission can conclusively prove that unusual or extraordinary circumstances exist and the required or desired brands can be purchased at substantially lower prices from wholesalers or brokerage firms.

In all instances involving purchases, other than directly from the manufacturer, the commission shall maintain full and complete records clearly reflecting the justification for such purchases. Said records shall include invoices, price lists, comparative prices, bills of lading and a certificate of justification signed by the director of the alcoholic beverage control division, as to the conditions requiring the purchase or purchases. All such records shall be retained for a period of three (3) years.

SOURCES: Codes, 1942, § 10265-107; Laws, 1966, ch. 649, § 7, eff from and after July 1, 1966.

§ 27-71-15. Transportation.

Except as otherwise provided in Section 67-9-1 for the transportation of limited amounts of alcoholic beverages for the use of an alcohol processing permittee, if transportation requires passage through a county which has not authorized the sale of alcoholic beverages, such transportation shall be by a sealed vehicle. Such seal shall remain unbroken until the vehicle shall reach the place of business operated by the permittee. The operator of any vehicle transporting alcoholic beverages shall have in his possession an invoice issued by the commission at the time of the wholesale sale covering the merchandise transported by the vehicle. The commission is authorized to issue regulations controlling the transportation of alcoholic beverages.

When the restrictions imposed by this section and by the regulation of the commission have not been violated, the person transporting alcoholic beverages through a county wherein the sale of alcoholic beverages is prohibited shall not be guilty of unlawful possession and such merchandise shall be immune from seizure.

SOURCES: Codes, 1942, § 10265-108; Laws, 1966, ch. 649, § 8; Laws, 1996, ch. 417, § 3, eff from and after July 1, 1996.

§ 27-71-17. Penalty for counterfeiting or reuse of labels.

It shall be unlawful for any person to counterfeit or reuse any label prescribed by the commission and used to identify alcoholic beverages sold at wholesale by the commission and, upon conviction, the person shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment in the State Penitentiary for not less than one (1) year, nor more than ten (10) years, or both.

SOURCES: Codes, 1942, § 10265-109; Laws, 1966, ch. 649, § 9; Laws, 2006, ch. 529, § 2, eff from and after passage (approved Apr. 3, 2006.)

§ 27-71-19. Repealed.

Repealed by Laws, 2006, ch. 529, § 12 effective from and after passage (approved April 3, 2006).

[Codes, 1942, § 10265-110; Laws, 1966, ch. 649, § 10; Laws, 1972, ch. 471, § 1, eff from and after passage (approved May 8, 1972).]

Editor's Note — Former § 27-71-19 required manufacturers, wholesalers or other suppliers selling to the commission to make certain reports and affix revenue identification stamps to bottles or other containers.

§ 27-71-21. Bond required of manufacturers, retailers; alternative cash or security deposit.

Before any person shall engage in the business of manufacturing or retailing of alcoholic beverages, he may be required to enter into a bond payable to the State of Mississippi, conditioned that he will conduct said business strictly in accordance with the laws of the State of Mississippi, and that he will comply with the rules and regulations prescribed by the commission, and pay all taxes due the State of Mississippi. The amount of a bond required of a manufacturer, not including a producer of native wine, shall not exceed one hundred thousand dollars ($100,000.00), and the amount required of a retailer shall be five thousand dollars ($5,000.00). Provided, however, any retailer whose check for purchase of merchandise or payment of taxes shall be dishonored may be required by the commission to post additional bond not to exceed five thousand dollars ($5,000.00). Such bond shall be made in a surety company authorized to do business in the State of Mississippi and shall be approved by the commission. The commission shall be authorized to institute suit in the proper court for any violation of the condition of said bonds. The amount of the bond required of a producer of native wine shall be five thousand dollars ($5,000.00).

As an alternative to entering into a bond as required by this section, any person who shall engage in the business of manufacturing or retailing alcoholic beverages may, subject to the same conditions of conduct required for bonds, deposit with the state treasurer the equivalent amount of the bond required for that particular person in cash or securities. The only securities allowable for this purpose are those which may legally be purchased by a bank or for trust funds, having a market value not less than that of the required bond. The commission shall file notice with the treasurer for any violation of the conditions of the cash or security deposit.

SOURCES: Codes, 1942, § 10265-111; Laws, 1966, ch. 649, § 11; Laws, 1976, ch. 467, § 11; Laws, 1982, ch. 409, § 1, eff from after July 1, 1982.

Cross References — Native wines generally, see § 67-5-1 et seq.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 161 et seq.

10 Am. Jur. Legal Forms 2d, Intoxicating Liquors § 151:23.

CJS. 48A C.J.S., Intoxicating Liquors § 233 et seq.

§ 27-71-23. Violations of article.

Any person liable for the payment of a privilege tax under the provisions of this article who shall violate any of the provisions of this article, or any rules or regulations promulgated by the commission under authority of this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000.00), or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court. Any person convicted of violating any of the provisions of this article, or any rules or regulations promulgated by the state tax commission under authority of this article, shall forfeit his permit and shall not thereafter be permitted to engage in any business taxable under the provisions of this article for a period of five (5) years.

SOURCES: Codes, 1942, § 10265-112; Laws, 1966, ch. 649, § 12, eff from and after July 1, 1966.

Cross References — Requirement of permits, see §§ 67-1-51, 67-1-53.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-71-25. Records to be maintained.

Any person engaged in the business of selling alcoholic beverages shall keep such records and make such reports with respect to the receipt, distribution and sale of alcoholic beverages as the commission may require. It shall be the duty of the commission to prescribe and promulgate uniform rules and regulations for keeping such records and making such reports.

SOURCES: Codes, 1942, § 10265-113; Laws, 1966, ch. 649, § 13, eff from and after July 1, 1966.

Cross References — Penalty for violation of this section, see § 27-71-23.

§ 27-71-27. Examination of records.

The commission or its authorized agents may examine any books, papers, records or other data bearing upon the correctness of any report required to be made under the provisions of this article, and may require the attendance of any person and take his testimony with respect to any such matter, and shall have power to administer an oath to such person. If any person summoned as a witness shall fail to obey any summons to appear before the commission or its authorized agent, or shall refuse to testify or answer any material question or to produce any book, record, paper or other data when required to do so, such failure or refusal shall be reported to the attorney general, the district attorney or county attorney, who shall thereupon institute proceedings in the chancery court of the county where such witness resides to compel obedience to any summons of the commission or its authorized agent.

SOURCES: Codes, 1942, § 10265-114; Laws, 1966, ch. 649, § 14, eff from and after July 1, 1966.

Cross References — Subpoena for witnesses, generally, see §§ 13-3-93, 99-9-11.

§ 27-71-29. Payment of taxes into treasury.

All taxes levied by this article shall be paid to the state tax commission in cash or by personal check, cashier's check, bank exchange, post-office money order or express money order and shall be deposited by the commission in the state treasury on the same day collected, but no remittances other than cash shall be a final discharge of liability for the tax herein imposed and levied unless and until it has been paid in cash to the state tax commission.

All taxes levied under Section 27-71-7(1) and received by the commission under this article shall be paid into the general fund, and the three percent (3%) levied under Section 27-71-7(2) and received by the commission under this article shall be paid into the special fund in the state treasury designated as the "alcoholism treatment and rehabilitation fund" as required by law. Any funds derived from the sale of alcoholic beverages in excess of inventory requirements shall be paid not less often than annually into the general fund.

SOURCES: Codes, 1942, § 10265-115; Laws, 1966, ch. 649, § 15; Laws, 1977, ch. 498, § 2; Laws, 1984, ch. 478, § 26, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Cross References — Requirement that state officers report collections and pay same into state treasury, see § 7-9-21.

Use of funds appropriated under section 27-71-29 to match federal funds which may be available for alcoholism treatment and rehabilitation, see § 27-71-7.

State depositories, see § 27-105-1 et seq.

§ 27-71-31. Construction of article.

Nothing herein shall be construed to make lawful the sale, possession, distribution or transportation of alcoholic beverages in this state, except to the extent, in the manner and in the localities that same shall be made lawful and legal under the provisions of the alcoholic beverage control law.

SOURCES: Codes, 1942, § 10265-117; Laws, 1966, ch. 649, § 19, eff from and after July 1, 1966.

Cross References — Local option alcoholic beverage control law, see § 67-1-1 et seq.

ARTICLE 2.

SURCHARGE FOR CONSTRUCTION OF ABC WAREHOUSE.

§§ 27-71-201 and 27-71-203. Repealed.

Repealed by Laws of 2006, ch. 529, § 13 effective from and after passage (approved April 3, 2006).

§ 27-71-201. [Laws, 1981, ch. 503, § 1, eff from and after May 1, 1981.]

§ 27-71-203. [Laws, 1981, ch. 503, § 2, eff from and after May 1, 1981.]

Editor's Note — Former § 27-71-201 imposed a surcharge and provided that the revenue from the surcharge be deposited in the "ABC Warehouse Construction Fund" for certain uses.

Former § 27-71-203 authorized the State Tax Commission to expend funds to construct and equip, with the approval of the building commission, a new warehouse for the alcoholic beverage control division.

ARTICLE 3.

LIGHT WINES AND BEER.

SEC.

27-71-301. Definitions.
27-71-303. License tax imposed.
27-71-305. When and where license tax is to be paid.
27-71-307. Excise tax imposed.
27-71-309. Repealed.
27-71-311. Bond required of manufacturer, wholesaler and brewpub.
27-71-313. Penalty for evading payment of tax.
27-71-315. Transportation from without the state.
27-71-317. Transportation within the state.
27-71-319 through 27-71-323. Repealed
27-71-325. Reports of wholesaler and preservation of invoices.
27-71-327. Records to be maintained.
27-71-329. Examination of records.
27-71-331. Penalty.
27-71-333. Assessment and collection of penalty.
27-71-335. Tax and penalty upon contraband light wine and beer; confiscation.
27-71-337. Payment into treasury.
27-71-339. Records of commissioner.
27-71-341. Additional tax.
27-71-343. Other privilege tax not to be levied.
27-71-345. Privilege tax to be levied by municipality.
27-71-347. Violation of this article.
27-71-349. Designation of sales territories for sale of light wine and beer by manufacturers and importers; presentation of light beer and wine to retailers by licensed wholesalers; transportation of light beer and wine; deliveries to retailers; sales by wholesalers to retailers in territories of other wholesalers; purchases for resale.

§ 27-71-301. Definitions.

When used in this article the words and terms hereafter mentioned shall have the following definitions:

(a) "State Auditor" means the State Auditor of Public Accounts of the State of Mississippi or any legally appointed deputy, clerk or agent.

(b) "Person" includes all natural persons or corporations, a partnership, an association, a joint venture, an estate, a trust, or any other group or combination acting as a unit and shall include the plural as well as the singular unless an intention to give another meaning thereto is disclosed in the context.

(c) "Consumer" means a person who comes into the possession of beer or light wine, the sale of which is authorized by Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose of consuming it, giving it away or otherwise disposing of it in any manner except by sale, barter or exchange.

(d) "Retailer" means any person who comes into the possession of such light wines or beer for the purpose of selling it to the consumer, or giving it away, or exposing it where it may be taken or purchased or acquired in any other manner by the consumer; however, the term "retailer" shall not include a person who offers and provides beer on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

(e) "Wholesaler" means any person who comes into possession of such light wine or beer for the purpose of selling, distributing, or giving it away to retailers or other wholesalers or dealers inside or outside of this state.

(f) "Commissioner" means the Commissioner of Revenue of the Department of Revenue or his duly appointed agents or employees.

(g) "Sale" includes the exchange of such light wines or beer for money, or giving away or distributing any such light wines or beer for anything of value; however, the term "sale" shall not include beer offered and provided on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

(h) "Light wines or beer" means beer and light wines legalized for sale by the provisions of Chapter 3 of Title 67, Mississippi Code of 1972.

(i) "Distributor" includes every person who receives either from within or from without this state, from a brewery, a winery or any other source, light wines or beer as defined in Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose of distributing or otherwise disposing of such light wines or beer to a wholesaler or retailer of such light wines or beer.

(j) "Brewpub" means the premises of any location in which light wine or beer is manufactured or brewed, for retail sale if the total amount of light wine or beer produced on the premises does not exceed the production limitation imposed in Section 67-3-22, and the light wine or beer is produced for consumption on the premises or off the premises as authorized in Section 67-3-22(3).

(k) "Hospitality cart" means a mobile cart from which alcoholic beverages and light wine and beer are sold on a golf course and for which a hospitality cart permit has been issued under Section 67-1-51.

(*l*) "Small craft brewery" shall have the meaning ascribed to such term in Section 67-3-3.

(m) "Manufacturer" means a person who brews beer at a brewery; however, the term does not include "brewpubs."

SOURCES: Codes, 1942, § 10237; Laws, 1934, ch. 127; Laws, 1998, ch. 308, § 1; Laws, 2007, ch. 462, § 7; Laws, 2009, ch. 492, § 112; Laws, 2012, ch. 569, § 4; Laws, 2017, ch. 345, § 8, eff from and after July 1, 2017.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option

Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2017 amendment rewrote (j), which read: "'Brewpub' means the premises of any restaurant, as defined in Section 67-1-5, Mississippi Code of 1972, in which light wine or beer is manufactured or brewed, subject to the production limitation imposed in Section 67-3-22, for consumption exclusively on the premises. 'Premises,' for the purpose of this paragraph (j) for a brewpub operated by a hospitality operator, means only those areas immediately adjacent and connected to the brewing facility where food is normally sold and consumed. 'Premises,' for the purposes of this paragraph (j) for a brewpub not operated by a hospitality operator, means those areas normally used by the brewpub to conduct business and shall include the selling areas, brewing areas and storage areas. For purposes of this paragraph (j), hospitality operator shall have the meaning ascribed to such term in Section 67-33-22"; and added (*l*) and (m).

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Commissioner of Revenue of the Department of Revenue, see § 27-3-3.

Taxation of alcoholic beverages, other than light wine and beer, see § 27-71-1 et seq.

Local option alcoholic beverage control law, see § 67-1-1 et seq.

Sale of light wine, beer, and other alcoholic beverages, see § 67-3-1 et seq.

Brewpub production limits and unlawful acts, see § 67-3-22.

Forfeiture of license for violation, see § 67-3-69.

JUDICIAL DECISIONS

1. In general.

Where evidence showed that defendant had in his possession cases of beer on which the state tax had not been paid or stamps affixed, and that the defendant intended to take the beer to a certain picnic but not for his own consumption, this could not warrant conviction of defendant under Code 1942, § 10233 which forbids wholesaler, distributor or retailer of beverages to have in his possession wine or beer manufactured or sold by manufacturer not complying with statutory requirements pertaining to sale and taxation of wine and beer. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 7, 8.

§ 27-71-303. License tax imposed.

Upon each person approved for a permit to engage in the business of selling light wines or beer there is hereby imposed, levied and assessed, to be collected and paid as herein provided, annual privilege taxes in the following amounts:

(a) Retailers—for each place of business	$ 30.00
(b) Wholesalers or distributors—for each county	$ 100.00
(c) Manufacturers—for each place of business	$1,000.00
(d) Brewpubs—for each place of business	$1,000.00

Upon each person operating an airline, bus, boat or railroad car upon which light wines or beer may be sold there is hereby imposed, levied and assessed, to be collected and paid, annual privilege taxes of Thirty Dollars ($30.00) for each airplane, bus, boat or railroad car so operated in this state.

Provided, however, the amount of the privilege tax to be paid for a permit issued for a period of less than twelve (12) months shall be that proportionate amount of the annual privilege tax that the number of months, or part of a month, remaining until its expiration date bears to twelve (12) months, but in no case shall the privilege tax be less than Ten Dollars ($10.00).

SOURCES: Codes, 1942, § 10240; Laws, 1934, ch. 127; Laws, 1979, ch. 423, § 1; Laws, 1998, ch. 308, § 2, eff from and after July 1, 1998.

Cross References — Statewide privilege taxes, see § 27-15-1 et seq.

Local privilege taxes, see § 27-17-1 et seq.

Excise tax imposed on wholesalers or distributors of light wine or beers, see § 27-71-307.

Privilege tax to be levied by municipality, see § 27-71-345.

Brewpub production limits and unlawful acts, see § 67-3-22.

Prohibition on manufacturers of light wine or beer acting as wholesalers or distributors, see § 67-3-46.

Forfeiture of license for violation, see § 67-3-69.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 167 et seq.

CJS. 48A C.J.S., Intoxicating Liquors § 245 et seq.

§ 27-71-305. When and where license tax is to be paid.

The specific privilege taxes imposed in Section 27-71-303 shall be paid to the commissioner before beginning the business upon which the tax is imposed.

Any person liable for the payment of any such privilege tax, who shall fail to pay the same and procure a license therefor before beginning the business for which such privilege tax is required, or who shall fail to renew, on or before the expiration date, the license on a business for which he has theretofore procured a privilege license, shall be liable for fifty percent (50%) of the amount of the tax imposed in Section 27-71-303 as penalty for the privilege of engaging in such business; and such tax and penalty shall be collected by the commissioner before a privilege license is issued.

SOURCES: Codes, 1942, § 10241; Laws, 1934, ch. 127; Laws, 1979, ch. 423, § 2, eff from and after July 1, 1979.

Cross References — Printing of privilege tax license blanks, see §§ 27-15-223, 27-17-475.

§ 27-71-307. Excise tax imposed.

(1)(a) In addition to the specific tax imposed in Section 27-71-303, there is hereby imposed, levied, assessed and shall be collected, as hereinafter provided, an excise or privilege tax upon each person engaged or continuing in the business of wholesaler or distributor of light wines or beer equivalent to Forty-two and Sixty-eight One-hundredths Cents (42.68¢) per gallon upon all light wines and beer acquired for sale or distribution in this state. The excise or privilege tax is also imposed at the same rate upon each gallon of light wine or beer manufactured by brewpubs, each of which shall accurately and reliably measure the quantity of light wine and beer produced by using a measuring device such as a meter or gauge glass or any other suitable method approved by the commissioner. The excise or privilege tax is also imposed at the same rate upon each gallon of light wine or beer provided by a small craft brewery for sale as authorized under Section 67-3-48 and upon each gallon of light wine or beer provided for tasting or sampling under Section 67-3-47. The tax is hereby imposed as an additional tax for the privilege of engaging or continuing in business.

(b) The excise tax imposed in this section shall be paid to the Department of Revenue monthly on or before the fifteenth day of the month following the month in which the beer or light wine was manufactured or received in this state. Monthly report forms shall be furnished by the commissioner to the wholesalers, distributors, brewpubs and small craft breweries.

(c) Provided that persons operating a railroad dining car, club car or other car in interstate commerce upon which light wines or beer may be sold and who are licensed under the provisions of Section 67-3-27 and any other law relating to the sale of such beverages shall keep such records of the sales of such light wines and beer in this state as the commissioner shall prescribe and shall submit monthly reports of such sales to the commissioner within fifteen (15) days after the end of each month on a form prescribed therefor by the commissioner, and shall pay the tax due under the provisions of this section at the time such reports are filed.

No official crowns, lids, labels or stamps with the word “MISSISSIPPI” or “MS” imprinted thereon or any other evidence of tax payment is required by this section, or may be required under rule or regulation promulgated by the commissioner, to be affixed on or to any part of a beer, light wine or malt cooler bottle, can or other light wine or malt cooler container. For purposes of this section, malt cooler products shall be defined as a flavored malt beverage made from a base of malt beverage and flavored with fruit juices, aromatics and essences of other flavoring in quantities and proportions such that the resulting product possesses a character and flavor distinctive from the base malt beverage and distinguishable from other malt beverages.

(2) A licensed wholesaler or distributor of beer or light wine may not import beer or light wine from any source other than a brewer or importer authorized by the commissioner to sell such beer or light wine in Mississippi. Any person who violates the provisions of this subsection, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court and shall be subject to license forfeiture following an appropriate hearing before the Department of Revenue.

(3) The wholesaler, distributor or small craft brewery shall be allowed credit for tax paid on beer or light wine which is no longer marketable and which is destroyed by same when such destruction is witnessed by an agent of the commissioner and when the amount of the excise tax exceeds One Hundred Dollars ($100.00). No other loss will be allowed.

A brewpub shall be allowed credit for light wine or beer which has passed through the meter, gauge glass or other approved measuring device and which has been soured or damaged. The brewpub shall record the removal of sour or damaged light wine or beer and may take credit after the destruction is witnessed by an agent of the commissioner and when the amount of excise tax exceeds Twenty-five Dollars ($25.00). No other loss shall be allowed.

(4) All manufacturers, brewers and importers of beer or light wine shall file monthly reports as prescribed by the commissioner listing sales to each wholesaler or distributor by date, invoice number, quantity and container size, and any other information deemed necessary.

(5) All small craft breweries shall file monthly reports as prescribed by the commissioner regarding the sale of light wine or beer authorized under Section 67-3-48.

(6) Manufacturers who offer and provide limited amounts of beer for tasting or sampling under Section 67-3-47 shall file monthly reports as prescribed by the commissioner regarding the beer provided for such tasting or sampling.

(7) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the sales tax law except where there is conflict, then the provisions of this chapter shall control.

SOURCES: Codes, 1942, § 10242; Laws, 1934, ch. 127; Laws, 1938, Ex. Sess, ch. 21; Laws, 1942, ch. 140; Laws, 1950, ch. 540; Laws, 1985, ch. 351, § 26; Laws, 1985, ch. 475; Laws, 1986, ch. 337, § 1; Laws, 1989, ch. 388, § 1; Laws, 1994, ch. 426, § 1; Laws, 1997, ch. 499, § 3; Laws, 1998, ch. 308, § 3; Laws, 1998, ch.

466, § 3; Laws, 2000, ch. 435, § 1; Laws, 2017, ch. 345, § 9, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 3 of ch. 308, Laws of 1998, effective July 1, 1998, amended this section. Section 3 of ch. 466, Laws of 1998, effective July 1, 1998, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 20, 1998, meeting of the Committee.

Amendment Notes — The 2017 amendment substituted "Department of Revenue" for "State Tax Commission" everywhere it appears; added the next-to-last sentence in (1)(a); and added "and small craft breweries" at the end of (1)(b); inserted "or small craft brewery" in (3); added (5) and (6) and redesignated former (5) as (7); and made minor stylistic changes throughout.

Cross References — Provisions of the Mississippi Sales Tax Law, see §§ 27-65-1 et seq.

Penalty for evading payment of tax, see § 27-71-313.

Seizure of beer which has not had stamps affixed as required by this section, as well as other sanctions, see § 27-71-335.

Sale of beer or light wine obtained from outside state, see § 67-3-52.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors §§ 167 et seq.

CJS. 48A C.J.S., Intoxicating Liquors § 250.

§ 27-71-309. Repealed.

Repealed by Laws of 1980, ch. 342, § 3, effective from and after July 1, 1980.

[Codes, 1942, § 10243; Laws, 1934, ch. 127]

Editor's Note — Former § 27-71-309 contained provisions for taxation of manufacturers.

§ 27-71-311. Bond required of manufacturer, wholesaler and brewpub.

Before any person shall engage in the business of manufacturing light wines or beer, in the business of wholesaler or distributor of light wines or beer, or in the business of a brewpub, he shall be required to enter into a good and sufficient bond. The bond shall be made payable to the State of Mississippi, in a sum of not less than Five Thousand Dollars ($5,000.00) nor more than Two Hundred Thousand Dollars ($200,000.00), the amount to be determined by the commission. The bond of a wholesaler, distributor or brewpub shall not exceed the amount of excise tax estimated to be owed by such wholesaler, distributor or brewpub for any sixty-day period. If a manufacturer is operating a small craft brewery and is distributing light wine or beer for sale as authorized under Section 67-3-48, the manufacturer, in addition to any other required bond, shall enter into a bond not to exceed the amount of excise tax estimated to be owed by such manufacturer for any sixty-day period. The bond shall be conditioned that he will conduct his business strictly in accordance with the laws of the State of Mississippi, and that he will comply with the rules and regulations prescribed by the commissioner, and pay the taxes imposed under the provisions of this article for the privilege of engaging or continuing in such business. Such bond shall be made in a surety company authorized to do business in the State of Mississippi, and shall be approved by the commissioner. The commissioner shall be authorized to institute suit in the proper court on said bond for any violation of the conditions of said bond.

SOURCES: Codes, 1942, § 10244; Laws, 1934, ch. 127; Laws, 1991, ch. 368, § 1; Laws, 1998, ch. 308, § 4; Laws, 2017, ch. 345, § 10, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added the fourth sentence.

JUDICIAL DECISIONS

1. In general.

Those who avail themselves of legislative privilege of engaging in sale of beer accept the privilege under the conditions attached to its exercise. Stone v. Farish, 199 Miss. 186, 23 So. 2d 911 (1945).

§ 27-71-313. Penalty for evading payment of tax.

If any person shall willfully evade the payment of any tax levied or imposed under this article, he shall be guilty of a felony, and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the State Penitentiary for not less than one (1) year, nor more than ten (10) years, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 10245; Laws, 1934, ch. 127; Laws, 1997, ch. 499, § 4; Laws, 2000, ch. 435, § 2, eff from and after July 1, 2000.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 27-71-315. Transportation from without the state.

Except as otherwise provided in Section 67-9-1 for the transportation of limited amounts of alcoholic beverages for the use of an alcohol processing permittee, it shall be unlawful for any person to transport from any point outside of this state to any point within this state, any light wines or beer except for delivery to a licensed wholesaler or distributor in this state; and except by common carrier. The commissioner may, however, upon application of a licensed wholesaler or distributor in this state, and under rules and regulations duly promulgated by him, issue a permit for the transportation by a licensed wholesaler or distributor of light wines and beer in trucks owned by such licensee, from without the state to the place of business of such licensee within the state, for distribution by said licensee. Such permit shall be granted for a specified period, not to exceed one (1) year.

Any person engaged in transporting any light wines or beer from any point outside of this state to any point within this state, shall have in his possession during the entire time he is engaged in transporting such light wines or beer, an invoice, bill of sale, or bill of lading, showing the true name and address of the consignor, and also the true name and address of the licensed wholesaler or distributor to whom such light wines or beer is to be delivered, and the quantity of such light wines or beer, unless such common carrier maintains a permanent office within this state where complete records of all light wines or beer transported from without this state to points within this state are kept, and open to inspection by the commissioner or his duly authorized agent, at all reasonable times.

It is hereby made the duty of all common carriers, and licensed wholesalers and distributors, transporting light wines or beer from without the State of Mississippi into the State of Mississippi, to furnish the commissioner on or before the fifteenth day of each month, a report showing the amount of beer transported within the state during the preceding month, the consignor, the consignee, and the quantity of light wines or beer so transported.

SOURCES: Codes, 1942, § 10247; Laws, 1934, ch. 127; Laws, 1938, Ex. Sess, ch. 21; Laws, 1942, ch. 139; Laws, 1996, ch. 417, § 4, eff from and after July 1, 1996.

§ 27-71-317. Transportation within the state.

It shall be unlawful for any person to transport from any point within this state to another point within this state, any light wines or beer, on which the tax imposed in Section 27-71-307 of this article has not been paid, except for immediate delivery to a licensed wholesaler or distributor in this state. And any person engaged in transporting any light wines or beer, on which the tax imposed in Section 27-71-307 of this article has not been paid, from any point within this state to another point within this state shall have in his possession during the entire time he is engaged in transporting such light wines or beer an invoice, bill of sale, or bill of lading showing the true name and address of the consignor, and also the true name and address of the licensed wholesaler or distributor to whom such light wines or beer is to be delivered and the quantity of such light wines or beer.

SOURCES: Codes, 1942, § 10248; Laws, 1934, ch. 127.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. 2d, Intoxicating Liquors § 96.

§§ 27-71-319 through 27-71-323. Repealed.

Repealed by Laws of 1979, ch. 423, § 4, effective from and after July 1, 1979.

§ 27-71-319. [Codes, 1942, § 10249; Laws, 1934, ch. 127]
§ 27-71-321. [Codes, 1942, § 10250; Laws, 1934, ch. 127; 1942, ch. 140]
§ 27-71-323. [Codes, 1942, § 10251; Laws, 1934, ch. 127]

Editor's Note — Former § 27-71-319 contained a savings clause in the event that certain sections were held unconstitutional.

Former § 27-71-321 provided for the imposition of a stamp tax.

Former § 27-71-323 provided for a fine to be levied against a retailer for having in his possession for the purpose of sale, or to sell, or to offer for sale, any light wines or beer, without a permit or privilege license.

§ 27-71-325. Reports of wholesaler and preservation of invoices.

It shall be the duty of every wholesaler or distributor of light wines or beer licensed under the provisions of Section 67-3-27, Mississippi Code of 1972, to file with the commissioner, on or before the fifteenth (15th) day of each month, a report covering all sales of such light wines or beer during the preceding month. Such report shall show the names and post-office addresses of all persons to whom such light wines or beer have been sold or delivered and the quantities and invoice prices of the light wines or beer thus sold or delivered.

It shall be the duty of each retail dealer in such light wines or beer to procure from the distributor or wholesaler from whom such light wines or beer were purchased or acquired, invoices showing the quantity of the light wines or beer purchased or acquired, and the date of each delivery thereof. Such invoices shall be preserved by the retailer and shall be open for inspection by the commissioner or his duly authorized agent for a period of two (2) years. It shall likewise be the duty of such retail dealer to file with the commissioner, on or before the fifteenth (15th) day of each calendar month, a report showing all purchases of such light wines or beer made by him during the preceding month. Such report shall disclose the names and addresses of all persons from whom such light wines or beer have been purchased or received by him during the preceding month and the quantities thus purchased or received.

SOURCES: Codes, 1942, § 10252; Laws, 1934, ch. 127.

§ 27-71-327. Records to be maintained.

Any person engaged in the business of manufacturer, distributor, wholesaler or retailer of light wines or beer and any brewpub shall keep such additional records and make such additional reports with respect to the manufacture, receipt, distribution and sale of such light wines or beer as the commissioner may require. It shall be the duty of the commissioner to prescribe and promulgate uniform rules and regulations for keeping such records and making such reports.

SOURCES: Codes, 1942, § 10253; Laws, 1934, ch. 127; Laws, 1998, ch. 308, § 5, eff from and after July 1, 1998.

§ 27-71-329. Examination of records.

The commissioner or his authorized agents may examine any books, papers, records or other data bearing upon the correctness of any report required to be made under the provisions of this article and may require the attendance of any person and take his testimony with respect to any such matter, and shall have power to administer oaths to such person. If any person summoned as a witness shall fail to obey any summons to appear before the commissioner or his authorized agent, or shall refuse to testify or answer any material question or to produce any book, record, paper or other data when required to do so, such failure or refusal shall be reported to the attorney general, the district attorney or county attorney, who shall thereupon institute proceedings in the chancery court of the county where such witness resides to compel obedience to any summons of the commissioner or his authorized agent.

SOURCES: Codes, 1942, § 10254; Laws, 1934, ch. 127.

Cross References — Subpoena of witnesses, generally, see §§ 13-3-93, 99-9-11.
Out-of-state audit of books to determine tax liability, see §§ 27-3-63, 27-3-65.

§ 27-71-331. Penalty.

If any manufacturer, wholesaler, distributor, brewpub or small craft brewery, subject to the provisions of this article, shall fail to pay any tax due under the provisions of this article, within the time, and in the manner, herein provided, the commissioner is authorized to assess, and collect, such tax, together with interest thereon from the date such tax became due at the rate of one percent (1%) per month, and in addition to the amount of the tax due and the interest accrued thereon, the commissioner may, in his discretion, assess and collect, from such delinquent taxpayer, a penalty equal to the amount of the tax found to be due.

SOURCES: Codes, 1942, § 10255; Laws, 1934, ch. 127; Laws, 1986, ch. 337, § 2; Laws, 1997, ch. 499, § 5; Laws, 1998, ch. 308, § 6; Laws, 2000, ch. 435, § 3; Laws, 2017, ch. 345, § 11, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment inserted “manufacturer” and “or small craft brewery”; and made a minor stylistic change.

§ 27-71-333. Assessment and collection of penalty.

Whenever it shall be determined by the commissioner that any wholesaler or distributor having in his possession, or engaging in the sale or distribution of light wines or beer, has failed to pay the tax, as provided herein, the commissioner shall compute the correct amount of tax due and unpaid and shall notify the taxpayer of the amount as being actually due and unpaid, and penalties, and interest and shall state in what manner this article is violated. The taxpayer so notified shall be given a period of ten (10) days in which to make objection and show cause why the additional tax, and penalties, and interest, should not be paid. On petition of the taxpayer, a hearing before the commissioner shall be granted, a final decision thereon shall be rendered, and the taxpayer notified as early as practicable. Any tax or deficiency in tax shall be assessed and paid, together with penalties and interest, if any, applicable thereto, within ten (10) days after notice and demand by the commissioner.

If no objection be made to the finding of the commissioner, and no hearing be had before the commissioner within the time herein specified, the findings of the commissioner shall be final. If a hearing be had, and the amount of tax due and unpaid be determined, notice of the amount of such tax, penalties and interest shall be mailed to the taxpayer, and, if not paid within ten (10) days thereafter, the commissioner shall forthwith issue a warrant under official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the tax, found within his county, for the payment of the amount thereof, with added damages, interest and cost of executing the warrant, and to return such warrant to the commissioner and pay to him money collected by virtue thereof by a time to be therein specified not more than sixty (60) days from the date of the warrant. The sheriff shall, within five (5) days after the receipt of the warrant, file with the circuit clerk of his county a copy thereof, and thereupon the circuit clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax, or portion thereof and damages for which the warrant is issued, and the date when such copy is filed; and thereupon the amount of such warrant or warrants so docketed shall become a lien upon the title to and interest in the real and personal property, including choses in action, of the person against whom it is issued in the same manner as a judgment duly enrolled in the office of such clerk. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment or attachment proceedings of a court of record; and he shall be entitled to the same fee for his service in executing the warrant as now allowed by law for like service, to be collected in the same manner as provided by law for like service.

SOURCES: Codes, 1942, § 10256; Laws, 1934, ch. 127; Laws, 1986, ch. 337, § 3; Laws, 1997, ch. 499, § 6; Laws, 2000, ch. 435, § 4, eff from and after July 1, 2000.

Cross References — Enrollment of judgments, generally, see § 11-7-189.
Attachment at law against debtors, see § 11-33-1 et seq.
Executions, generally, see § 13-3-111 et seq.
Sheriff's execution and return of process, see § 19-25-37.
Action to recover tax, penalty and interest, see § 27-35-5.

§ 27-71-335. Tax and penalty upon contraband light wine and beer; confiscation.

Any light wines or beer found at any point within this state which has been in the possession of any wholesaler or distributor for a period of more than forty-eight (48) hours and any light wines or beer transported into this state from a point outside this state, or from point-to-point within this state in violation of the provisions of this article, or any light wines or beer held or possessed by any person within this state on which the legal and proper tax has not been paid when due, whether such person be a wholesaler, retailer or distributor, or individual, and whether the light wines or beer be for sale or storage or individual use, except light wines or beer in possession of a licensed wholesaler or distributor for a period of time less than forty-eight (48) hours after receipt of the light wines or beer within this state, and light wines or beer held in storage by licensed manufacturers or producers, are hereby declared to be contraband goods, and there is hereby imposed and assessed, as tax and penalty, to be collected by the commissioner, an amount equal to the amount of the excise tax otherwise imposed under the Mississippi Wine and Beer Tax Law, plus a penalty of one hundred percent (100%) of the amount of the tax; or, at the option of the commissioner, the light wines or beer may be seized by the commissioner or his agents or any sheriff, or other lawful officer, and shall be dealt with in the same manner as provided for in Section 67-1-18 for alcoholic beverages.

SOURCES: Codes, 1942, § 10258; Laws, 1934, ch. 127; Laws, 1958, ch. 579, § 1; Laws, 1962, ch. 334, § 1; Laws, 1986, ch. 337, § 4; Laws, 1997, ch. 499, § 7; Laws, 2000, ch. 435, § 5; Laws, 2015, ch. 438, § 1, eff from and after passage (approved Apr. 13, 2015.)

Cross References — Failure to comply with law relating to alcoholic beverage tax, see § 27-71-507.

Purchase money security interests, see §§ 75-9-103, 75-9-317, 75-9-324.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Although replevin was not the proper action to secure possession from the sheriff of a truckload of beer confiscated while being transported through a "dry" county, where the plaintiff's declaration filed in the action was in sufficient detail to constitute a claim for the beer, he was entitled to a hearing on the merits. Mississippi State Hwy. Comm'n v. Ulmer, 186 So. 2d 460 (Miss. 1966).

§ 27-71-337. Payment into treasury.

All taxes levied by this article and required to be paid to the commissioner shall be payable to the commissioner in cash or by personal check, cashier's check, bank exchange, post-office money order or express money order and shall be deposited by the commissioner into the state treasury on the same day collected, provided that no remittances other than cash shall be a final discharge of liability for the tax herein imposed and levied unless and until it has been paid in cash to the commissioner.

SOURCES: Codes, 1942, § 10259; Laws, 1934, ch. 127; Laws, 1984, ch. 478, § 27, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984 provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purpose of this act."

Cross References — Requirement that state officers report collections and pay same into state treasury, see § 7-9-21.

State depositories, see § 27-105-1 et seq.

§ 27-71-339. Records of commissioner.

At the end of each month, the state auditor shall carefully check the books and records of the commissioner and his accounts with any bank or banks and shall verify the amounts paid into the state treasury in so far as they relate to the collections of any taxes imposed by this article.

SOURCES: Codes, 1942, § 10260; Laws, 1934, ch. 127.

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

§ 27-71-341. Additional tax.

The taxes imposed under the provisions of this article shall be in addition to all other privileges, licenses, and other taxes now imposed by law in this state.

SOURCES: Codes, 1942, § 10261; Laws, 1934, ch. 127.

Cross References — Requirement of permit to sell beer or light wine, see § 67-3-15 et seq.

§ 27-71-343. Other privilege tax not to be levied.

No levee district or other taxing district, except as hereinafter provided, shall impose any privilege tax on any business licensed under the provisions of Section 67-3-27, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10262; Laws, 1934, ch. 127; Laws, 1948, ch. 458, § 1.

§ 27-71-345. Privilege tax to be levied by municipality.

Any municipality, in which any business licensed under the provisions of Section 67-3-27, Mississippi Code of 1972, may be carried on, shall have the right to impose upon persons engaged in such business an annual privilege tax of not more than fifty percent (50%) of the tax imposed by Section 27-71-303 of this article, and any county, in which any business licensed under the provisions of Section 67-3-27, Mississippi Code of 1972, may be carried on outside of the territory taxed by municipalities, shall have the right to impose upon persons engaged in such business an annual privilege tax of not more than fifty percent (50%) of the tax imposed by Section 27-71-303 of this article; provided, however, that no person engaged in the business of manufacturer, brewpub, wholesaler or distributor of light wines or beer shall be taxed by any municipality other than that in which the warehouse or plant of such wholesaler or distributor, or the premises of such brewpub, is located, nor shall any county impose any such tax upon such manufacturer, brewpub, wholesaler or distributor of light wines or beer if the place of business is located within the jurisdiction of any municipality.

SOURCES: Codes, 1942, § 10263; Laws, 1934, ch. 127; Laws, 1948, ch. 458, § 2; Laws, 1998, ch. 308, § 7, eff from and after July 1, 1998.

Cross References — Restriction on municipal levy of privilege taxes, see §§ 27-15-7, 27-17-5.

RESEARCH REFERENCES

ALR. Effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue. 6 A.L.R.2d 737.

§ 27-71-347. Violation of this article.

Except as otherwise provided in this article, any person who violates any provision of this article, or any rule or regulation promulgated by the commissioner under authority of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court. Any person convicted of violating any of the provisions of this article, or any rules or regulations promulgated by the commissioner under authority of this article, shall forfeit his permit, and shall not thereafter be permitted to engage in any business taxable under the provisions of this article.

SOURCES: Codes, 1942, § 10264; Laws, 1934, ch. 127; Laws, 1997, ch. 499, § 8; Laws, 2000, ch. 435, § 6, eff from and after July 1, 2000.

Cross References — Forfeiture of license for violation, see § 67-3-69.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-71-349. Designation of sales territories for sale of light wine and beer by manufacturers and importers; presentation of light beer and wine to retailers by licensed wholesalers; transportation of light beer and wine; deliveries to retailers; sales by wholesalers to retailers in territories of other wholesalers; purchases for resale.

(1) Every manufacturer or importer of light wine or beer shall designate sales territories for each of its brands sold in Mississippi and shall name one (1) licensed light wine or beer wholesaler in each territory who, within such territory, shall be the licensed wholesaler for the brand or brands assigned by the manufacturer or importer. If the manufacturer or importer supplies more than one (1) brand, sales territories may be granted to a different wholesaler for the sale of each brand. No licensed wholesaler shall distribute the specified brand or brands of light wine or beer outside his assigned territory, nor shall he knowingly sell to a retailer whose licensed retail establishment is located outside his assigned territory.

(2) A licensed wholesaler designated as the licensed wholesaler for light wine or beer within a designated sales territory shall present that light wine or beer for sale to all licensed retailers within the designated sales territory without discrimination in service. A licensed wholesaler shall not sell, supply or deliver, either directly or indirectly through a third party, any light wine or beer to a licensed retailer outside of the designated sales territory of the designated wholesaler, nor to any person the licensed wholesaler has reason to believe will sell or supply any quantity of the light wine or beer to any retail location outside of the designated sales territory of the licensed wholesaler.

(3) All light wines or beer shall be transported only by a marked conveyance owned or leased by the licensed wholesaler and operated by the licensed wholesaler or an employee of the wholesaler for the products of a manufacturer or importer within the designated sales territory to the address and location of a licensed retail dealer within that designated sales territory.

(4) Any light wine or beer sold by the licensed wholesaler shall not be delivered to, received by or stored at any place other than the address and location of the licensed retailer for which the required licenses and permits have been issued.

(5) With the approval of the designated manufacturer, a licensed wholesaler may sell the designated brands to a licensed retailer located in a designated sales territory of another licensed wholesaler if the former licensed wholesaler is unable temporarily for any reason to provide the designated brands of the designated manufacturer within its designated sales territory.

(6) All light wine or beer purchased by a licensed wholesaler for resale in this state shall come into the physical possession of the licensed wholesaler and be unloaded in and distributed from the warehouse of the licensed wholesaler located in this state before being resold in this state.

(7) As used in this section, the term "sales territory" shall have the meaning ascribed to such term in Section 67-7-5.

SOURCES: Laws, 1995, ch. 619, § 13, eff from and after passage (approved April 7, 1995).

Cross References — Beer Industry Fair Dealing Act, see § 67-7-1 et seq.

JUDICIAL DECISIONS

1. Private right of action.

State statute regulating sales of beer did not provide a private right of action for a retailer to allege that a distributor violated the statute. Major Mart v. Mitchell Distrib. Co., 46 F. Supp. 3d 639 (S.D. Miss. Aug. 14, 2014), dismissed in part by 2015 U.S. Dist. LEXIS 186640 (S.D. Miss. July 9, 2015).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 193 et seq.

ARTICLE 5.

BREWERIES.

SEC.
27-71-501. List of dealers, etc.
27-71-503. Brands.
27-71-505. Revocation of permits.
27-71-507. Failure to comply with law — effect.
27-71-509. Labels.
27-71-511. Violations; penalty.

§ 27-71-501. List of dealers, etc.

It shall be the duty of persons operating breweries which manufacture beer and wine or either of them to be sold in the State of Mississippi, under the authority of Chapter 3 of Title 67, Mississippi Code of 1972, or under the authority of Article 3 of this chapter, to furnish to the chairman of the State Tax Commission, on demand, a correct list of all wholesalers, distributors and other persons having contracts with the person operating such breweries, for the purchase, distribution, sale and transportation of such beverages into or in the State of Mississippi.

SOURCES: Codes, 1942, § 10230; Laws, 1934, ch. 128.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — License taxes of breweries or manufacturers of beer, see §§ 27-71-303.

Provisions for revocation of permits to sell beer or wine manufactured by a person who has failed to furnish information required by this section, see § 27-71-505.

§ 27-71-503. Brands.

It shall be the duty of any person to whom a permit has been or may hereafter be issued in accordance with Section 67-3-23, Mississippi Code of 1972, to furnish to the chairman of the tax commission, on demand, the brand or brands of beer or wine which shall be owned, transported, sold or possessed by the holder of such permit, and the name and post-office address of the manufacturer of said beverage or beverages, and if more than one brand of said beverage or beverages is handled, then with the names of all the brands and the names and post-office addresses of all of the manufacturers thereof.

SOURCES: Codes, 1942, § 10231; Laws, 1034, ch. 128.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Chairman of State Tax Commission, see § 27-3-3.

Provisions for revocation of permits to sell beer or wine for failure to furnish information required by this section, see § 27-71-505.

§ 27-71-505. Revocation of permits.

The commissioner may revoke any or all permits issued by him to sell beer or wine manufactured by any person who shall fail or refuse to furnish the information required by Section 27-71-501 of this article, and he may revoke the permit of any person who shall fail or refuse to furnish the information required by Section 27-71-503 of this article, and said revocation may apply to any or all brands of such beverages, if the manufacturer or holder of the permit shall fail or refuse to comply with the rules and regulations promulgated by him.

SOURCES: Codes, 1942, § 10232; Laws, 1934, ch. 128; Laws, 1986, ch. 337, § 5; Laws, 1997, ch. 499, § 9; Laws, 2000, ch. 435, § 7, eff from and after July 1, 2000.

Cross References — State Tax Commission generally, see § 27-3-1 et seq.

Taxes on breweries or manufacturers of wine, see § 27-71-303.

JUDICIAL DECISIONS

1. In general.

Where evidence showed that defendant had in his possession cases of beer on which the state tax had not been paid or stamps affixed, and that the defendant intended to take the beer to a certain picnic but not for his own consumption, this could not warrant conviction of defendant under Code 1942, § 10233 which forbids wholesaler, distributor or retailer of beverages to have in his possession wine or beer manufactured or sold by manufacturer not complying with statutory requirements pertaining to sale and taxation of wine and beer. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

§ 27-71-507. Failure to comply with law — effect.

If any manufacturer of any such beverage or beverages shall fail or refuse to comply with the requirements of Chapter 3 of Title 67, Mississippi Code of 1972, and of Article 3 of this chapter, or of this article, or of any rule or regulation promulgated by the chairman of the state tax commission, it shall be unlawful for any wholesaler, distributor or retailer of beverages under said laws thereafter to have in his possession any wine or beer manufactured or sold by such manufacturer, of whatever kind or description and all such beverages as may be found in the possession of any person who deals in or transports or otherwise handles any of such beverages are hereby declared to be contraband and may be seized and sold and otherwise dealt with as provided by Section 27-71-335, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 10233; Laws, 1934, ch. 128.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

JUDICIAL DECISIONS

1. In general.

Where evidence showed that defendant had in his possession cases of beer on which the state tax had not been paid or stamps affixed, and that the defendant intended to take the beer to a certain picnic but not for his own consumption, this could not warrant conviction of defendant under Code 1942, § 10233 which forbids wholesaler, distributor or retailer of beverages to have in his possession wine or beer manufactured or sold by manufacturer not complying with statutory requirements pertaining to sale and taxation of wine and beer. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

In prosecution for possession of quantity of unpacked malt liquor, where evidence was not sufficient to sustain conviction for the offense, but might have been sufficient to sustain conviction for violation of other statutes relating to malt liquor, the judgment would be reversed and the cause remanded for further proceedings. Mills v. State, 219 Miss. 194, 68 So. 2d 278 (1953).

§ 27-71-509. Labels.

It shall be unlawful for any brewer, manufacturer, distributor or retailer of light wines and beer, or either of them, to whom a permit has been issued under the provisions of Sections 67-3-15 and 67-3-23, Mississippi Code of 1972, to write or print on any label or container of either of the above named commodities any matter relating to the alcoholic content of such beverage or beverages, except a statement, to the effect that the contents of the vessel or container in which light wine shall be sold does not contain alcohol in excess of five percent (5%) of the contents thereof, by weight, and that the contents of the vessel or container in which beer shall be sold does not contain alcohol in excess of eight percent (8%) of the contents thereof, by weight. It shall be unlawful for any such brewer, wholesaler, distributor or retailer to sell any such commodity with any statement in conflict with the provisions of this section, with reference to the alcoholic content of such beverage or beverages, except that a statement of alcoholic content may be expressed on any light wine or beer label in terms of volume or weight, at the manufacturer's option; and such statement, if by volume, shall be subject to the same permitted tolerance allowed for wine containing fourteen percent (14%) alcohol by volume or less by Section 4.36(b)(1) of the Federal Labeling Requirements for Wine, 27 CFR Part 4, subpart D, and Section 7.71(c) 27 CFR Part 7, subpart G, and, if by weight, shall be subject to an equivalent permitted tolerance, determined in terms of alcohol by weight.

SOURCES: Codes, 1942, § 10234; Laws, 1934, ch. 128; Laws, 1986, ch. 337, § 6; Laws, 1987, ch. 355, § 1; Laws, 1998, ch. 306, § 1; Laws, 2012, ch. 323, § 12, eff from and after July 1, 2012.

Cross References — Alcoholic beverages defined, see § 67-1-5.

Regulation of sale and manufacture of light wines and beer generally, see § 67-3-1 et seq.

§ 27-71-511. Violations; penalty.

Any person who shall violate any provision of this article, or any rule or regulation promulgated by the commissioner under its authority, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court. Any person convicted of violating any of the provisions of this article, or any rules or regulations promulgated by the commissioner under authority of this article, shall forfeit his permit, and shall not thereafter be permitted to engage in any business taxable under the provisions of this article, or of Article 3 of this chapter.

SOURCES: Codes, 1942, § 10235; Laws, 1934, ch. 128.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 73

Tax Refunds

Sec.
27-73-1. Taxes erroneously paid refunded.
27-73-3. Taxes erroneously paid refunded; taxpayer must prove he bore burden of tax.
27-73-5. Period within which suits may be filed for refunds.
27-73-7. Erroneous tax payments refunded.
27-73-9. Payment of federal and state tax refunds due to decedent individual without administration.
27-73-11. Overpayments by tax collector or chancery clerk refunded.
27-73-13. Withdrawal of consent to, and abatement of, suits for refund of tax on mineral interests, etc.

§ 27-73-1. Taxes erroneously paid refunded.

(1) If any person, firm or corporation has paid, or shall hereafter pay to the Auditor of Public Accounts or the Commissioner of Insurance, through error or otherwise, whether paid under protest or not, any ad valorem, privilege or excise tax for which the person, firm or corporation was not liable, or if any such taxpayer has paid any tax in excess of the sum properly due and such erroneous payment or overpayment has been paid into the proper treasury, the taxpayer shall be entitled to a refund of the taxes so erroneously paid. Taxes erroneously paid within the meaning of this section shall include double payment, or overpayment, or payment on state, United States, vacant and exempt land, and the purchase price paid for the redemption of lands erroneously sold for taxes.

Claims for refund under the provisions of this section shall be filed with the Auditor of Public Accounts and shall be supported by proper documents showing the overpayment or erroneous payment for which claim is made. The auditor is hereby authorized and required to make a careful investigation and audit of all such claims and if he shall find that the taxes or monies covered by the claim have been erroneously paid into the treasury of the state, county, drainage or levee districts, he shall distribute the claim against each separate fund in proportion to the amount paid over to such fund in each case, and submit the audited claim with the voucher and evidence upon which the claim is based, to the Attorney General for his approval. The Attorney General shall have plenary power to require the claimant or the officer who collected the tax to furnish any additional documents or information as may in his opinion be necessary or proper to enable him to determine the merits of the claim.

If the Attorney General shall be of the opinion that the claim is in proper form and complies with the requirements of this section, he shall approve the claim and return it to the Auditor of Public Accounts, who shall thereupon file in his office the audited claim, together with the Attorney General's approval and all other documents relating to the claim, as a voucher, and issue his warrant on the State Treasurer in favor of the claimant for the amount of purchase money or taxes erroneously paid into the State Treasury. The auditor shall then certify to the clerk of the board of supervisors, the secretary of the drainage district board, or the secretary of the levee board, as the case may be, the amount, if any, found to be due to the claimant by the county, drainage district or levee district. Upon receipt of the certificate, the board of supervisors, or the commissioners of the drainage district or of the levee district, shall cause a warrant to be issued on the treasurer of the county or drainage or levee district, as the case may be, in favor of the claimant for the amount erroneously paid into their respective treasuries.

If the Attorney General shall disapprove the claim, he shall return it to the Auditor of Public Accounts accompanied by his opinion which shall show the reason for his disapproval, whereupon the auditor shall promptly notify the claimant of the disapproval. A claimant taxpayer being aggrieved at the disapproval may, within six (6) months from the date thereof, file in the chancery court his petition for appeal and review. All petitions for appeal and review shall be filed in the chancery court of the county in which the money for which refund is claimed was originally paid, and shall be accompanied by a bond in the sum of Five Hundred Dollars ($500.00) conditioned to pay all costs which may accrue in the case, which bond shall be approved by the clerk of the court. Upon the approval of the bond, the chancery clerk shall give the Attorney General and the Auditor of Public Accounts notice, as required by law, of the filing of the petition. It shall be the duty of the auditor to promptly transmit to the court in which the appeal is pending a certified copy of the entire record of the claim as shown by the files in his office, which record shall be docketed by the clerk in the cause, and the controversy shall be tried by the court on such record. It shall be the duty of the Attorney General to defend on behalf of the state, and he may request the district attorney, county attorney or attorney for the drainage or levee district, as the case may be, to defend on behalf of the county, drainage or levee district. If the claimant taxpayer shall prevail, judgment shall be entered requiring the payment of the claim in like manner as if it had been duly approved by the Attorney General. If, however, the action of the Attorney General in disapproving the claim shall be affirmed by the court, judgment shall be entered against the appealing taxpayer for the costs of the proceedings.

Nothing in this section shall be so construed as to authorize the recovery or repayment of any tax heretofore levied and collected by any special road district, drainage district, or separate school district, on account of, or upon the ground that the law authorizing such tax was unconstitutional, whether the unconstitutionality of such tax be based upon the creation or mode of operation of any special road district, drainage district or separate school district. Provided further, that nothing in this section shall be construed as authorizing the refunding of state taxes paid into the State Treasury through error, or otherwise, or satisfying a judgment or decree against the state except through an appropriation therefor by the Legislature.

(2) This section shall not be construed as repealing or modifying Section 27-73-7, or any other law providing for the application for or the certification of a claim for refund, but shall be taken and construed as an additional and supplemental method of refunding taxes erroneously paid.

SOURCES: Codes, 1871, § 1719; 1880, § 537; 1892, § 3831; 1906, §§ 2949, 4346, 4349; Hemingway's 1917, §§ 5284, 6980, 6983; 1930, § 3276; 1942, § 9979; Laws, 1926, ch. 196; Laws, 1938, ch. 260; Laws, 1944, ch. 127, §§ 1, 2; Laws, 1985, ch. 425, § 7; Laws, 2005, ch. 499, § 30, eff from and after July 1, 2005.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Municipal tax refunds, see § 21-33-79.

Income tax refunds, see §§ 27-7-313 to 27-7-317.

Estate tax refunds, see § 27-9-49.

Corporate franchise tax refunds, see § 27-13-47.

Redemption of lands sold by mistake, see § 27-45-13.

Gasoline and motor fuels tax refunds, see § 27-55-45.

Oils tax refunds, see § 27-57-33.

Liquified compressed gas tax refunds, see §§ 27-59-35, 27-59-47.

Sales tax refunds, see § 27-65-53.

Drainage tax funds, see § 51-29-83.

JUDICIAL DECISIONS

1. In general.
2. Who entitled to refund.
3. Voluntary payment, or payment under protest.
4. Action to recover refund.

1. In general.

This section only provides a refund mechanism for taxes paid to the Auditor of Public Accounts, the State Tax Commission or the Commissioner of Insurance, and does not provide a refund mechanism for taxes paid to a county tax collector. State v. Loranth & Assocs., Inc., 746 So. 2d 312 (Miss. 1999).

Title 27, Chapter 7, and particularly § 11-13-11, provide a sufficiently plain, speedy, and efficient remedy to satisfy the Tax Injunction Act; this section is analogous to a general statute of limitations which gives way to a specific statute, so that this section in no way interferes with or prevents recovery under income tax refund statutes. Todd v. Johnson, 718 F. Supp. 1305 (S.D. Miss. 1989).

Attorney General, in examining into merits of claim against state and determining whether it is meritorious or legal claim, exercises discretion. Selig v. Price, 167 Miss. 612, 142 So. 504 (1932).

Auditor of public accounts is without authority to audit and allow claim for privilege taxes erroneously paid without approval of attorney general. National Life & Accident Ins. Co. v. State, 159 Miss. 513, 132 So. 549 (1931).

Claim for privilege taxes erroneously collected, not being subject to allowance by auditor of public accounts, will not support action against state. National Life & Accident Ins. Co. v. State, 159 Miss. 513, 132 So. 549 (1931).

This section [Code 1942, § 9979] does not confer judicial power on the auditor and the attorney general, nor does the allowance of money out of the public treasury require a judicial proceeding; The scheme herein provided is an easy method to secure uniformity of practice; but the treasurer or other official may contest the legality of the claim in a judicial proceeding. Pearl River County v. Lacey Lumber Co., 124 Miss. 85, 86 So. 755 (1921).

The limitations for a refund of the price of land to which the state did not have title does not begin to run until the land commissioner cancels the patent and presents the claim to the auditor. Wilson v. Naylor, 116 Miss. 573, 77 So. 606 (1918).

2. Who entitled to refund.

Taxes paid on assessment of surface of land by owner who resided thereon and who had executed oil and gas lease reserving his mineral rights did not cover tax on separately assessed royalty interests in producing property so as to entitle him to refund of tax paid on assessment of royalty interest. State v. Cummings, 206 Miss. 630, 40 So. 2d 587 (1949).

State legislature in enacting Laws of 1944, chs. 10 and 11, appropriating various sums to take care of the refund of income and other taxes erroneously paid to the state tax commission, including claims "based on the renegotiation of war contracts," is presumed to have known that the holders of war contracts were required when filing their state income tax returns to report as income all compensation received from the federal government, subject to the right of the government subsequently to require the renegotiation of the contract as to price and to demand a refund of such portion of the profits reported as income which were found to be excessive. State ex rel. Rice v. Mississippi Inst. of Aeronautics, 198 Miss. 288, 22 So. 2d 372 (1945).

Facts rendering payment of state income taxes an overpayment or an erroneous payment within the meaning of this section [Code 1942, § 9979] (Laws, 1944, ch. 127) need not exist at the time the income tax return was made, in respect to renegotiation of war contract with federal government as to price under federal statute, whereby contractor was required to refund to federal government a certain sum as excess profits upon which contractor had previously paid state income tax and to which the contractor was entitled to a refund under Laws of 1944, ch. 11, inasmuch as the subsequent renegotiation of the contract as to price related back so as to render the income tax on the amount refunded to the federal government an overpayment, since the state tax commission received the tax subject to the right of the federal government to require refund of such portion of the total compensation paid under the contract. State ex rel. Rice v. Mississippi Inst. of Aeronautics, 198 Miss. 288, 22 So. 2d 372 (1945).

In suit by war contractor to recover overpayment of state income tax paid on sum subsequently refunded to the federal government as excess profits, where contractor's claim for refund was duly audited and allowed by the state tax commission but disallowed by the attorney general, presumption arose, in absence of proof to the contrary, that when the state tax commission audited and approved the refund it had before it the necessary factors to determine whether or not the claim was just. Consequently, the contractor was not precluded from recovering the refund because of failure to show that in the renegotiation proceedings the federal government did not allow the contractor a credit for the state income tax paid on the excess profits refunded where the presumption was not rebutted and no additional information was requested of the contractor by the attorney general, and the supreme court could not go beyond the record and assume that the contractor did receive such credit in the renegotiation proceedings. State ex rel. Rice v. Mississippi Inst. of Aeronautics, 198 Miss. 288, 22 So. 2d 372 (1945).

An institute, engaged solely in training pilots for the United States Air Force under contract with federal government, which paid state income tax on amount received under the contract during 1942 but which subsequently refunded a substantial portion thereof to the federal government as excess profits pursuant to renegotiation of the contract as to price, was entitled to a refund of the income tax paid on the amount refunded to the federal government, even though the institute failed to show that in the renegotiation proceedings the federal government did not allow a credit for the state income tax paid on the amount later refunded to the federal government, where the claim for the income refund was duly audited and allowed by the state tax commission but disallowed by the attorney general although the latter failed to request additional information from the institute on the issue whether the federal government allowed a credit for the state income tax paid. State ex rel. Rice v. Mississippi Inst. of Aeronautics, 198 Miss. 288, 22 So. 2d 372 (1945).

Party paying taxes improperly assessed against land is entitled to refund, regardless of who owns land when refund is made. Acker v. Spencer, 166 Miss. 684, 148 So. 633 (1933).

Where owners of land borrowed money from holder of trust deed covering land to pay taxes improperly assessed thereon, transferee of trust deed paying subsequently improperly assessed taxes and foreclosing deed held entitled only to refund of taxes paid by him, original owners being entitled to refund of taxes paid by them. Acker v. Spencer, 166 Miss. 684, 148 So. 633 (1933).

The right to receive back the money is an incident to the land, it runs with it, it is transferable by an execution sale of the land, and is attached when the land is so seized. McGehee v. Fitts, 65 Miss. 357, 4 So. 93 (1888).

The state's vendee of a tax title is entitled to the benefit of the section. Wilkinson County Bd. of Supvrs. v. Fitts, 63 Miss. 600 (1886).

3. Voluntary payment, or payment under protest.

A taxpayer electing to invoke the provisions of this section [Code 1942, § 9979] as a means of recovering taxes alleged to have been erroneously collected, need not have paid the taxes under protest, but it is necessary that he shall file a proper application with the auditor in that behalf. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

The fact that this statute, in amending a former enactment, provided for the refund of taxes, whether paid under protest or not "and only on proper application of [the] claimant" did not change the fact that this remedy is merely an additional method to that afforded by Code 1930, 253 (Code 1942, § 2932), and such changes in the statute did not serve to make it mandatory for the taxpayer to first present his claim to the auditor and the attorney general. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

Where bank voluntarily paid taxes and did not avail itself of statutory remedies to cure alleged errors, receiver of bank held not entitled to mandamus to compel attorney general to approve refund. Selig v. Price, 167 Miss. 612, 142 So. 504 (1932).

Taxes, when voluntarily paid, become property of state and county, though erroneously assessed, subject to discretion of legislative body in making appropriations for refund and attorney general in approving claim therefor. Selig v. Price, 167 Miss. 612, 142 So. 504 (1932).

However, protest at time of paying taxes was necessary to enable party to recover taxes erroneously paid, where payment was made prior to the enactment of the provision making protest unnecessary to the right of refund. Mississippi Cent. R.R. v. City of Hattiesburg, 163 Miss. 311, 141 So. 897 (1932).

Statute authorizing refund of taxes erroneously paid, whether paid under protest or not, contemplated prospective operation. Mississippi Cent. R.R. v. City of Hattiesburg, 163 Miss. 311, 141 So. 897 (1932).

Statute authorizing refund of taxes erroneously paid, whether paid under protest, or not, creates right, and not mere remedy. Mississippi Cent. R.R. v. City of Hattiesburg, 163 Miss. 311, 141 So. 897 (1932).

License fees voluntarily paid for privilege of seining or netting fish, and paid into special county fund could not be recovered. Schmittler v. Sunflower County, 156 Miss. 227, 125 So. 534 (1930), error overruled, 156 Miss. 234, 126 So. 39 (1930).

A petition for a refund of a privilege tax need not allege that the tax was paid under protest. Riley v. Ammon, 143 Miss. 861, 108 So. 296 (1926).

4. Action to recover refund.

Taxpayers who failed to appeal a Mississippi Tax Commission assessment within 30 days were barred by the doctrines of res judicata and collateral estoppel from seeking relief more than two years later under Miss. Code Ann. § 27-73-1; even if such relief were allowed, it was time barred under Miss. Code Ann. § 27-73-5 where the facts showed that four years and nine months had passed between the date of assessment and the date suit was filed. Davis v. AG, 935 So. 2d 856 (Miss. 2006).

Action by gasoline distributor to recover refund of gasoline tax is subject to one year statute of limitations under § 27-55-19, not to 3 year statute of limitations under §§ 27-55-45, 27-73-1. Triangle Refineries, Inc. v. Mabus, 467 So. 2d 650 (Miss. 1985).

Laws, 1944, ch. 127, giving taxpayer right to sue the state for taxes illegally paid, gives right to sue for refund of taxes illegally paid before, as well as after, its passage. State v. Cummings, 206 Miss. 630, 40 So. 2d 587 (1949).

Where liability insurer paid tax on gross premium receipts received during two successive six months' periods under Code 1942, § 9537, and during a subsequent six months' period returned unearned premiums in excess of the premium receipts during that same period, insurer was entitled to recover the tax paid on the unearned premiums returned to the policyholders, where claim therefor was disallowed by the attorney general. Barnett v. United States Cas. Co., 197 Miss. 873, 21 So. 2d 5 (1945).

Where unearned premiums returned to policyholders during a six months' period exceed the gross premium receipts for the same period, insurer is entitled to recover overpayment of the tax imposed by Code 1942, § 9537, if the insurer is unable to obtain relief through the ordinary administrative channels. Barnett v. United States Cas. Co., 197 Miss. 873, 21 So. 2d 5 (1945).

Save as to the particular taxes specially excepted, under this chapter a taxpayer may pay to a tax collector, state or county, any tax demanded, thereby not delaying its payment, and when, upon subsequent development or ascertainment, it is found that as a matter of ultimate liability the tax, or the full amount, so collected is not rightfully retained, and the taxpayer is unable to obtain relief through the ordinary administrative channels, he may maintain suit to recover the overpayment. Barnett v. United States Cas. Co., 197 Miss. 873, 21 So. 2d 5 (1945).

ATTORNEY GENERAL OPINIONS

There is no authorization under Miss. Code Section 27-73-1 for tax collector to pay interest on refund. Kenwright, Mar. 10, 1993, A.G. Op. #93-0103.

RESEARCH REFERENCES

ALR. Payment of taxes to prevent interference with business as involuntary so as to permit recovery. 80 A.L.R.2d 1040.

Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 975, 976.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 71 et seq., 81 et seq., 242, 243, 383, 411 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation, §§ 238:43, 238:44.

CJS. 85 C.J.S., Taxation § 1071 et seq.

§ 27-73-3. Taxes erroneously paid refunded; taxpayer must prove he bore burden of tax.

(1) In any suit, application or proceedings by any taxpayer for any recovery or refund of privilege, franchise, or other excise tax, which has been paid to any tax collecting officer or commission of the state, any county, or municipality, by any person, firm or corporation or which may have been paid into the state treasury, the person seeking such recovery or refund of such taxes must allege and prove that he alone bore the burden of the tax involved and did not directly or indirectly collect the tax from any other person.

(2) It is the declared purpose of this section to make certain that any such taxes recovered by or refunded to any taxpayer will be recovered by or go only to, as the case may be, the person who has borne the burden of any illegal tax,

or any erroneous or mistaken payment or any overpayment of any such privilege, franchise, or other excise tax for which such person, firm or corporation was not liable and, therefore, that the person seeking such a recovery or refund thereof is entitled in justice and good conscience to the relief requested and is, therefore, the real party in interest.

(3) The term "taxpayer", as used herein, shall include the person, firm or corporation who bore the burden of the said tax and also any person, firm or corporation who transmitted or in whose behalf was transmitted the funds representing the amount of the tax though not bearing the burden of the tax.

SOURCES: Codes, 1942, § 9979.3; Laws, 1956, ch. 423, §§ 1-3.

JUDICIAL DECISIONS

1. In general.

The statute was not applicable to a refund owed to the United States for a wholesale liquor markup tax imposed under Regulation 25 of the Mississippi Tax Commission on liquor sold to federal military installations located in Mississippi where the U.S. Supreme Court had ruled that the regulation was an unconstitutional state tax upon an instrumentality of the U.S. government. United States v. State Tax Comm'n, 645 F.2d 4 (5th Cir. 1981), reh'g denied, 650 F.2d 282 (5th Cir. 1981), cert. denied, 454 U.S. 896, 102 S. Ct. 394, 70 L. Ed. 2d 211 (1981).

ATTORNEY GENERAL OPINIONS

A refund of erroneously paid taxes may be made for taxes that were paid within three years prior to the date the petition seeking such refunds was filed with the board of supervisors. See Section 15-1-49. Fortier, February 23, 1996, A.G. Op. #96-0087.

Where a taxpayer erroneously paid ad valorem taxes on property for which she had timely filed for homestead exemption as a result of a clerical error of the tax assessor in taking the property off the homestead exemption roll, the county and city tax collectors could refund the overpayment of taxes for the year 2000 to the taxpayer if the board of supervisors made the factual finding by order on the minutes that the taxpayer was entitled to homestead exemption and that the tax assessor erroneously removed the property from the homestead exemption rolls. McWilliams, Apr. 12, 2002, A.G. Op. #02-0111.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 975, 976.

CJS. 85 C.J.S. § 1071 et seq.

§ 27-73-5. Period within which suits may be filed for refunds.

Except as otherwise provided in Sections 27-7-49, 27-13-49 and 27-65-42, all suits by any taxpayer for the recovery of any privilege, income, franchise, or other excise tax, and all applications or proceedings for any refund or credit of these taxes shall be filed or made within three (3) years next after the return was filed, or from the date the assessment of the tax was made, or from the date the tax was paid, as the case may be, whichever is the earlier, and no recovery of taxes under any such suit shall be had and no refund of taxes shall be made unless the suit or application was filed within the period of limitation.

However, as to income taxes the three-year statute of limitations shall be extended to six (6) years in cases where the reported net income of a taxpayer has been reduced by the Internal Revenue Service for any taxable period.

SOURCES: Codes, 1942, § 9979.5; Laws, 1956, ch. 424, § 1; Laws, 2013, ch. 470, § 5, eff from and after Jan. 1, 2013.

Editor's Note — Laws of 2013, ch. 470, § 7, effective July 1, 2013, provides:

"SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective."

ATTORNEY GENERAL OPINIONS

If person's claim for refund has been barred by passage of three year period described in Section 27-7-313 or 27-73-5, then Section 97 of Mississippi Constitution prohibits legislature from reviving such persons' right to claim refund. Reynolds/Clark, March 30, 1994, A.G. Op. #94-0182.

JUDICIAL DECISIONS

1. Time barred.

Taxpayers who failed to appeal a Mississippi Tax Commission assessment within 30 days were barred by the doctrines of res judicata and collateral estoppel from seeking relief more than two years later under Miss. Code Ann. § 27-73-1; even if such relief were allowed, it was time barred under Miss. Code Ann. § 27-73-5 where the facts showed that four years and nine months had passed between the date of assessment and the date suit was filed. Davis v. AG, 935 So. 2d 856 (Miss. 2006).

§ 27-73-7. Erroneous tax payments refunded.

The tax collector is authorized and empowered to refund any individual, firm or corporation any ad valorem, privilege or excise tax which has been paid or collected through error or otherwise when such person, individual, firm or corporation has paid any such tax in excess of the sum properly due whether paid under protest or not. Taxes erroneously paid within the meaning of this section shall include, but not be limited to, double payment, or overpayment, or payment on state, United States, vacant and exempt land, and the purchase paid for the redemption of lands erroneously sold for taxes.

All refunds under this provision shall be made out of any monies collected by the tax collector from the same source of revenue, or if such source of revenue no longer exists the refund shall come from the general fund collections. The tax collector shall issue a warrant to the claimant and deduct the proper amounts from his next settlement.

SOURCES: Codes, 1942, § 9980; Laws, 1932, ch. 311; Laws, 1985, ch. 425, § 8, eff from and after passage (approved March 26, 1985).

Cross References — Additional and supplemental method of refunding taxes erroneously paid, see § 27-73-1.

JUDICIAL DECISIONS

1. In general.

Corporation sought a refund for property on which it erroneously bid at a tax sale, but the appellate court determined that the trial court properly instructed the jury before the jury returned a verdict in favor of the tax collector; the corporation was required to establish that the tax collector some how mistakenly assigned the corporation as the purchaser of the property, and the jury determined that the evidence did not support such a finding. Fiddle, Inc. v. Shannon, 834 So. 2d 39 (Miss. 2003).

ATTORNEY GENERAL OPINIONS

Where information provided by taxpayer erroneously reflected two separate buildings, and assessor assessed building twice, with result that taxpayer made double payment of tax due, provision applies allowing refund for claims made within applicable statute of limitations; provision is construed to require reimbursement from current year collections allocated, i.e., deducted from next settlement, on pro rata basis among all funds supported via ad valorem tax collections; if any fund no longer exists, pro rata share of such must be made from general fund. Griffith, July 5, 1990, A.G. Op. #90-0653.

Taxes already paid were not in excess of sum properly due nor were they erroneously collected; taxpayer did not meet qualifications for homestead exemptions in years in question and is not entitled to refund of taxes for taxes paid. Batey, August 29, 1990, A.G. Op. #90-0608.

Absent order of the county board of supervisors changing the assessment roll, there is no authority to refund taxes, even though improperly calculated, that have been properly paid according to the relevant assessment roll. Smith, Jan. 8, 1992, A.G. Op. #91-0961.

City tax Collector may refund ad valorem taxes paid which became due after effective date of exemption set forth in directive of Tax Commission. Taylor Sept. 9. 1993, A.G. Op. #93-0599.

Pursuant to Section 27-73-7, the tax collector is authorized to refund to an individual erroneously paid taxes, and that such a refund is to be paid from the monies collected at tax sales, or the general fund. Hicks, September 27, 1995, A.G. Op. #95-0662.

All refunds under Section 27-73-7 shall be made out of any monies collected by the tax collector from the same source of revenue, or if such source of revenue no longer exists, the refund shall come from the general fund collections. The tax collector shall issue a warrant to the claimant and deduct the proper amounts from his next settlement. McKenzie, November 22, 1995, A.G. Op. #95-0776.

Only the assessment roll for 1999 could be amended to show property in question as exempt, so that the taxes for 1999 could be refunded. Reynolds, April 28, 2000, A.G. Op. #2000-0212.

A purchaser at a tax sale that is declared void is entitled to a refund of "the purchase paid for lands erroneously sold for taxes," even in a situation where the purchaser paid in excess of the taxes due and costs. Myers, July 28, 2000, A.G. Op. #2000-0410.

If a city board of aldermen finds and spreads upon the minutes that the county tax collector has corrected an assessment and has made a refund to a taxpayer, then the city tax collector may refund the overpayment to the taxpayer where there was an overpayment by the taxpayer as a result of an error apparent on the face of the assessment rolls which was carried over to the statement sent to the taxpayer. Bowman, Feb. 22, 2002, A.G. Op. #02-0050.

Where a taxpayer erroneously paid ad valorem taxes on property for which she had timely filed for homestead exemption as a result of a clerical error of the tax assessor in taking the property off the homestead exemption roll, the county and city tax collectors could refund the overpayment of taxes for the year 2000 to the taxpayer if the board of supervisors made the factual finding by order on the minutes that the taxpayer was entitled to homestead exemption and that the tax assessor erroneously removed the property from the homestead exemption rolls. McWilliams, Apr. 12, 2002, A.G. Op. #02-0111.

Under § 23-73-7, the purchaser of lands sold at a void tax sale is entitled to receive as a refund an amount equal to the purchase price paid at the tax sale; there is no provision authorizing the payment of interest to such purchaser, except that portion of the purchase price which represented interest due on the taxes due prior to the tax sale. Yancey, Sept. 6, 2002, A.G. Op. #02-0485.

There is no provision for taxes being reimbursable pro rata for fractional parts of a tax year after the property is acquired by a charitable or benevolent organization. Hollimon, Dec. 6, 2002, A.G. Op. #02-0677.

A situation in which a co-tenant out of possession made tax payments to the county for a period of over twenty years following a tax sale since the co-tenant had no knowledge that said property was not in their possession any longer was subject to the requirement that a refund for erroneously paid taxes may only be made for taxes that were paid within three years prior to the date the petition seeking such refunds was filed with the board of supervisors. Griffith, Sept. 12, 2003, A.G. Op. 03-0423.

Where a tax sale of a property was conducted in error by a city, there is no authority for payment of interest by the city to the purchaser for the period of time in which the city held the purchaser's funds. Kerby, July 1, 2005, A.G. Op. 05-0286.

Reimbursement from current year collections allocated would include a school district, since it is one of the funds supported by ad valorem tax collections. Phillips, Oct. 27, 2006, A.G. Op. 06-0521.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 975, 976.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 71 et seq., 81 et seq., 411 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation, §§ 238:43, 238:44.

CJS. 85 C.J.S. § 1071 et seq.

§ 27-73-9. Payment of federal and state tax refunds due to decedent individual without administration.

In any case where the U. S. Treasury Department or the Mississippi state tax commission determines there exists an overpayment of federal or Mississippi tax of an individual, and the person in whose favor the overpayment is determined is dead at the time such overpayment of tax is to be refunded, and irrespective of whether the deceased had filed a joint and several or separate tax return of any sort, the amount of such overpayment, if not in excess of five hundred dollars ($500.00), may be paid, without the necessity of administration, to the decedent's surviving spouse, if any, or if the decedent left no surviving spouse, then to decedent's surviving children; and if decedent left no children and no spouse surviving decedent, then to decedent's surviving mother; and if decedent left no spouse or children or mother surviving decedent, then to decedent's surviving father; and if decedent left no spouse or children or parent surviving decedent, then to decedent's surviving brothers and sisters; and refund of said overpayment directly to said surviving spouse or children or parent or brothers and/or sisters by the United States or the State of Mississippi shall operate as a complete acquittal and discharge to it of liability from any suit, claim or demand of whatsoever nature by any heir, distributee or creditor of the decedent or other person. In the event that, at the time of payment, any one of the above referred to persons shall be a minor, said payment may be made to the minor directly without necessity of guardianship.

SOURCES: Codes, 1942, § 9981.5; Laws, 1964, ch. 296, eff from and after passage (approved April 2, 1964).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Descent and distribution, generally, see § 91-1-1 et seq.

Executors and administrators, see § 91-7-1 et seq.

§ 27-73-11. Overpayments by tax collector or chancery clerk refunded.

Where any tax collector or chancery clerk has, or shall hereafter, by mistake or oversight, erroneously pay into the state treasury any moneys on account of ad valorem or privilege taxes, such officer may make application to the auditor for repayment of such taxes, and the auditor and attorney general shall thoroughly investigate such claim, and if found to be due, the attorney general shall so certify to the auditor, who shall draw his warrant in favor of such tax collector or chancery clerk, to be paid out of the same fund in which it was erroneously paid into the state.

SOURCES: Codes, 1906, § 4348; Hemingway's 1917, § 6982; 1930, § 3278; 1942, § 9982; Laws, 1900, ch. 76 (5); Laws, 1934, ch. 202.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 9982] providing for the refund of money paid into the state treasury by mistake is not violative of the constitution. Taylor v. Guy, 119 Miss. 357, 80 So. 786 (1919).

§ 27-73-13. Withdrawal of consent to, and abatement of, suits for refund of tax on mineral interests, etc.

(1) The consent of the State of Mississippi, however expressed, for maintaining any suit to recover from the state or any county thereof, or any supervisors' district, or any road district, school district, or other district thereof, a refund of ad valorem taxes heretofore paid upon royalties, overriding royalties, working interests, leases, or any other interests in oil, gas, or other minerals however described or created, either owned separate and apart from the surface rights or otherwise, is hereby withdrawn and the state hereby declares that it refuses to consent to any suit in any county or state, or any federal court therein maintaining the suit for the purpose of securing a refund of any ad valorem taxes on any such mineral interests, heretofore paid into the state treasury, or any county treasury, or any other officer or depository authorized to receive such funds. In any case, where suit has already been instituted to recover such taxes, so paid into any public treasury or depository, unless paid under protest, or duress, it shall be and is hereby abated, dismissed, and further proceedings forbidden.

(2) Any order hereafter entered by any person, board, or officer whether state, county, district or other body, which has allowed, issued, or approved a refund of such taxes is hereby abated, made void and payment prohibited as to such ad valorem tax on such interests of any kind whatsoever in oil, gas, or other minerals having or purporting to have the authority to allow, approve, or refund any taxes so paid to any officer or depository, such order or evidence of debt purported to authorize, approve, allow any such refund is withdrawn and rendered wholly null and void so far as any such refund is authorized or purported to be authorized thereby, unless the taxes for which refund is sought, were paid under protest or duress.

(3) This section shall operate to prohibit any such refunding of such ad valorem taxes mentioned in the preceding paragraphs from and after April 9, 1948, so that no further proceedings may be taken in any of the provisions mentioned heretofore for such purpose, and no appeal shall be authorized or allowed from the order of abatement or dismissal and such orders allowing appeals from the dismissal or abatement of said suits are rendered null and void in the court to which such appeals are prosecuted. They shall be dismissed by such court, with costs.

SOURCES: Codes, 1942, § 9982.5; Laws, 1948, ch. 445, §§ 1-3.

JUDICIAL DECISIONS

1. In general.

Laws of 1948, ch. 445, does not divest judgment creditors of right to recover taxes, if such were illegally paid, and of abating appeal. State v. Cummings, 206 Miss. 630, 40 So. 2d 587 (1949).

CHAPTER 75

Reciprocal Collection of Taxes

SEC.
27-75-1. Title of chapter.
27-75-3. Taxes, defined.
27-75-5. Reciprocal right of other states to sue in Mississippi.
27-75-7. Reciprocal right of other states to enforce judgment.
27-75-9. Right to sue shall apply to all taxes owing.
27-75-11. Certificate of foreign state conclusive proof of authority to bring suit.
27-75-13. Attorney to bring suits in foreign state to collect taxes.
27-75-15. Employment of foreign attorneys to collect taxes.
27-75-16. Use of out-of-state collection agencies to collect delinquent taxes.
27-75-17. Construction of chapter.

§ 27-75-1. Title of chapter.

This chapter shall be called the "Tax Reciprocity Law".

SOURCES: Codes, 1942, § 9940-01; Laws, 1954, ch. 234, § 1.

Cross References — Reciprocity with respect to estate tax exemption of nonresident's intangibles, see § 27-9-13.

Insurance premium retaliatory tax law, see § 27-15-121 et seq.

Reciprocity agreements with respect to motor vehicle privilege taxes, see § 27-19-143.

Reciprocity agreements with respect to interstate commercial carriers motor fuel tax, see § 27-61-27.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation, § 752 et seq.

§ 27-75-3. Taxes, defined.

The term "taxes", as used in this chapter, shall include (1) all taxes of every nature including, without restricting same, all excise, ad valorem, special assessment, licenses, privilege taxes, and fees; (2) any and all penalties and interest or penalties or interest which may be owing upon or arising from any tax which may be owing, and which penalty and interest shall be recoverable as part of the tax with respect to which they are imposed.

SOURCES: Codes, 1942, §§ 9940-07, 9940-12; Laws, 1954, ch. 234, § 7; Laws, 1955, Ex. Sess, ch. 117, § 2.

RESEARCH REFERENCES

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-5. Reciprocal right of other states to sue in Mississippi.

Any state or territory of the United States, or any political subdivision thereof, and the District of Columbia, shall have the right to sue in the courts of Mississippi to recover any tax which may be owing to it if the like right is accorded to the State of Mississippi and its political subdivisions by said state, territory or District of Columbia, whether such right is granted by statutory authority or as a matter of comity, and in such action the courts of Mississippi shall recognize and enforce the tax laws of such other state, territory or district.

SOURCES: Codes, 1942, § 9940-02; Laws, 1954, ch. 234, § 2.

Cross References — Reciprocity with respect to estate tax exemption of nonresident's intangibles, see § 27-9-13.

Reciprocity agreements with respect to motor vehicle privilege taxes, see § 27-19-143.

Reciprocity agreements with respect to interstate commercial carriers motor fuel tax, see § 27-61-27.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 752 et seq.

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-7. Reciprocal right of other states to enforce judgment.

The foregoing right to sue in the courts of Mississippi to recover said tax shall, without restricting same, include the right to all process and writs to enforce or collect the judgment or decree recovered which are issuable to enforce or collect any other judgment or decree of the courts of Mississippi.

SOURCES: Codes, 1942, § 9940-03; Laws, 1954, ch. 234, § 3.

RESEARCH REFERENCES

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-9. Right to sue shall apply to all taxes owing.

The rights granted by Sections 27-75-5 and 27-75-7 shall apply to all taxes owing to such other state or its political subdivision or District of Columbia, as mentioned therein, which may be or become owing to it both before and after the passage of this chapter.

SOURCES: Codes, 1942, § 9940-04; Laws, 1954, ch. 234, § 4.

Cross References — Definition of "taxes," see § 27-75-3.

RESEARCH REFERENCES

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-11. Certificate of foreign state conclusive proof of authority to bring suit.

A certificate of the secretary of state or other comparable officer of the other state, territory or District of Columbia, that a certain official of such state, territory or district has the authority to bring such suit or collect the taxes so to be collected by such action shall be conclusive proof of the authority of such official to bring such a suit.

SOURCES: Codes, 1942, § 9940-05; Laws, 1954, ch. 234, § 5.

RESEARCH REFERENCES

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-13. Attorney to bring suits in foreign state to collect taxes.

The Attorney General of the State of Mississippi, or the officer authorized by the law of the State of Mississippi to collect the tax owing to the State of Mississippi, or its political subdivisions, is hereby empowered in his official capacity to bring and prosecute to final judgment or decree suits in the courts of other states or territories of the United States and the District of Columbia in the name of the State of Mississippi, or its political subdivisions, to recover any taxes, as defined in this chapter, and which includes penalties and interest, which are now or may hereafter be owing to the State of Mississippi, or its political subdivisions, and to take such other proceedings as authorized by the laws of the state where the suit is brought to collect or enforce any judgment or decree rendered therein. The officer bringing such suit is authorized to pay any court costs or court fees which may be incurred in such suit and required to be paid by the laws of the state, territory or District of Columbia wherein the action is brought, and such court costs or fees may be paid out of the fund appropriated for the operation of the office of such officer bringing said suit, and any political subdivision of the state may allow or appropriate funds necessary to pay such costs.

SOURCES: Codes, 1942, § 9940-06; Laws, 1954, ch. 234, § 6.

Cross References — Tax suits by attorney general generally, see §§ 7-5-51, 7-5-55.
Employment of foreign attorneys to collect taxes, see § 27-75-15.

RESEARCH REFERENCES

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-15. Employment of foreign attorneys to collect taxes.

The Attorney General or the officer authorized by the law of the State of Mississippi to collect any tax owing to the State of Mississippi or its political subdivisions, is hereby authorized to employ attorneys residing in a sister state, district or territory, where suits are instituted to recover taxes due the State of Mississippi, pursuant to this chapter, to aid and assist in the prosecution of any such suit, when it appears to be in the best interest of the State of Mississippi. It is further provided that such attorney fees may, within the discretion of the designated officers, be set on a fixed or contingent fee basis. The fixed fee shall be paid out of the fund appropriated for the operation of the office of such officer bringing suit, and the contingent fee shall be deducted from and paid out of the proceeds of the particular claim, subject, however, to the approval of the Governor as to the employment and amount of such fee in either instance.

SOURCES: Codes, 1942, § 9940-11; Laws, 1955, Ex. ch. 117, § 1.

RESEARCH REFERENCES

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-16. Use of out-of-state collection agencies to collect delinquent taxes.

(1) The Chairman of the Mississippi State Tax Commission may enter into agreements with one or more private persons, companies, associations or corporations which provide debt collection services outside this state in order to recover taxes, including any penalties or interest thereon, owing to the State of Mississippi. An agreement may include the rate of payment and the manner in which compensation for services shall be paid. The compensation may be added to the amount of the taxes and collected as a part thereof by the contractor from the tax debtor. If the taxes or compensation for services, or both, are paid directly to the State Tax Commission, the commission is authorized to pay the contractor's compensation out of the funds collected. The chairman shall provide the necessary information for the contractor to fulfill its obligation under an agreement.

(2) At the discretion of the chairman, the contractor may, as a part of the collection process, refer the tax debt for litigation by its legal representatives in the name of the Mississippi State Tax Commission.

SOURCES: Laws, 1988, ch. 349, § 1; Laws, 1998, ch. 414, § 1, eff from and after July 1, 1998.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 also provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — Inapplicability of the secrecy provision, making it unlawful to divulge tax return information, to this section, see § 27-3-73.

Inapplicability to this section of provision prohibiting State Tax Commission from releasing tax reports and returns, see § 27-3-73.

Inapplicability to this section of provision prohibiting the release of State income tax and withholding returns and information, see § 27-7-83.

Inapplicability to this section of provision prohibiting the release of corporation franchise tax returns and information, see § 27-13-57.

Inapplicability to this section of provision prohibiting the release of State sales tax returns and information, see § 27-65-81.

Inapplicability to this section of provision prohibiting the release of applications, returns and information with respect to gaming licensing, see § 75-76-87.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information. 1 A.L.R.4th 959.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 771 et seq.

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

§ 27-75-17. Construction of chapter.

This chapter is a remedial law and shall be liberally construed by the courts of this state.

SOURCES: Codes, 1942, § 9940-08; Laws, 1954, ch. 234, § 8.

RESEARCH REFERENCES

CJS. 85 C.J.S. §§ 1174, 1177, 1927, 2217.

CHAPTER 77

Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue

Sec.	
27-77-1.	Definitions.
27-77-3.	Board of review created; board may perform duties en banc or in panels; quorum requirement; chairman or presiding officer.
27-77-5.	Appeals from Department of Revenue actions; appeal must be in writing; notice and hearing; appeal to Board of Tax Appeals from decision of board of review; hearing before Board of Tax Appeals; withdrawal of appeal.
27-77-7.	Judicial review of Board of Tax Appeals' findings and order; petition; surety bond; payment under protest in lieu of bond; payment of uncontested tax by taxpayer; payment of uncontested overpayment by agency; issuance of summons; trial; appeals of chancery court order to Supreme Court.
27-77-9.	Suspension, surrender, seizure or revocation of permit, tag or title; notice of intent; written request for show cause hearing; board of review or hearing officer to conduct hearing; order; appeal to Board of Tax Appeals; notice and hearing; withdrawal of appeal.
27-77-11.	Denial of application or request for permit, IFTA license, IRP registration, tag or title; notice of denial; appeal to board of review; jurisdiction of agency to reverse appealed denial; notice and hearing; order; appeal to Board of Tax Appeals; notice and hearing; authority of board of review to amend and/or correct appealed order prior to decision by Board of Tax Appeals; withdrawal of appeal.
27-77-12.	Revocation or suspension of IFTA license or IRP registration; notice of intent to revoke or suspend; surrender or seizure of IRP credentials for revoked or suspended registration; written request for show cause hearing; withdrawal of request for hearing; appeal of order of hearing officer; withdrawal of appeal.
27-77-13.	Board of Tax Appeals' orders pursuant to Section 27-77-9, 27-77-11 or 27-77-12 final unless appealed to chancery court; petition; payment of costs of preparation of record; review by chancery court; appeal to Supreme Court from order of chancery court.
27-77-15.	Disclosure of certain information in possession of the Department of Revenue or Board of Tax Appeals prohibited; exceptions; certain records exempt from public records disclosure requirements; certain meetings and deliberations exempt from open meetings law.
27-77-17.	Functions of commission that relate to ad valorem taxation, local option alcoholic beverage law, and native wine law exempt from provisions of this chapter.
27-77-19.	Rules and regulations; subpoena power.

§ 27-77-1. Definitions.

As used in this chapter:

(a) "Agency" means the commissioner acting directly or through his duly authorized officers, agents, representatives and employees, to perform duties and powers prescribed by the laws of this state to be performed by the Commissioner of Revenue or the Department of Revenue.

(b) "Board of Review" means the Board of Review of the Department of Revenue as appointed by the commissioner under Section 27-77-3, and also means a panel of the Board of Review when an appeal is considered by a panel of the Board of Review instead of the Board of Review en banc.

(c) "Board of Tax Appeals" means the Board of Tax Appeals as created under Section 27-4-1.

(d) "Chairman" means the Chairman of the Board of Tax Appeals.

(e) "Commissioner" means the Commissioner of the Department of Revenue.

(f) "Denial" means the final decision of the staff of the agency to deny the claim, request for waiver or application being considered. In this context, staff of the agency does not include the Board of Review or the Board of Tax Appeals. "Denial" does not mean the act of returning or refusing to consider a claim, request for waiver or application for permit, IFTA license, IRP registration, title or tag by the staff of the agency due to a lack of information and/or documentation unless the return or refusal is in response to a representation by the person who filed the claim, request for waiver or application in issue that information and/or documentation indicated by the staff of the agency to be lacking cannot or will not be provided.

(g) "Designated representative" means an individual who represents a person in an administrative appeal before a hearing officer of the agency, before the Board of Review or before the Board of Tax Appeals.

(h) "Executive director" means the Executive Director of the Board of Tax Appeals.

(i) "IFTA license" means a permit, license or decal which the agency is authorized to issue or revoke under the Interstate Commercial Carriers Motor Fuel Tax Law (Section 27-61-1 et seq.) or the International Fuel Tax Agreement.

(j) "IFTA licensee" means a person holding the IFTA license, applying for an IFTA license or renewing an IFTA license.

(k) "IRP registration" means the registration of a vehicle under the provisions of the International Registration Plan.

(*l*) "IRP registrant" means a person in whose name a vehicle or vehicles are registered under the provisions of the International Registration Plan.

(m) "IRP credentials" means the cab card and license plate issued by the commissioner or agency in accordance with the International Registration Plan.

(n) "Last known address" when referring to the mailing of a notice of intent to suspend, revoke or to order the surrender and/or seizure of the permit, IFTA license, IRP registration, IRP credentials, tag or title or to the mailing of a denial of the permit, IFTA license, IRP registration, tag or title, means the last mailing address of the person being sent the notice as it appears on the record of the agency in regard to the permit, IFTA license, IRP registration, tag or title in issue. All other references to "last known address" in this chapter mean the official mailing address that the hearing officer, the Board of Review or the executive director has for the addressee in their file on the administrative appeal in which the document or item is being mailed to the addressee. The addressee is presumed to have received any document or item mailed to his official mailing address. The commissioner, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process for appeals before an administrative hearing officer or the Board of Review of the Department of Revenue and the procedure for changing that official mailing address. The Board of Tax Appeals, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process before that board and the procedure for changing that official mailing address. It is the responsibility of the addressee to make sure that his official mailing address is correct.

(o) "Mail," "mailed" or "mailing" means placing the document or item referred to in United States mail, postage prepaid, via mail, addressed to the person to whom the document or item is to be sent at the last known address of that person. Where a person is represented in an administrative appeal before a hearing officer, the Board of Review or the Board of Tax Appeals by a designated representative, the terms "mail," "mailed" or "mailing" when referring to sending a document or item to that person shall also mean placing the document or item referred to in United States mail, via mail, postage prepaid, to the last known address of that person's designated representative. Mailing to the designated representative of a taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder shall constitute mailing and notice to the taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder.

(p) "Permit" means a type of license or permit that the agency is authorized to issue, suspend or revoke, such as a sales tax permit, a beer permit, a tobacco permit, a dealer license, or designated agent status, but does not include:

(i) Any type of permit issued under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq. or under the Mississippi Native Wine Law of 1976, Section 67-5-1 et seq.;

(ii) An IFTA license; or

(iii) An IRP registration, including the IRP credential issued as a result of IRP registration.

(q) "Permittee" means a person holding a permit, applying for a permit or renewing a permit.

(r) "Person" means a natural person, partnership, limited partnership, corporation, limited liability company, estate, trust, association, joint venture, other legal entity or other group or combination acting as a unit, and includes the plural as well as the singular in number. "Person" includes the state, county, municipal, other political subdivision and any agency, institution or instrumentality thereof, but only when used in the context of a taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder.

(s) "Refund claim" means a claim made in writing by a taxpayer and received by the agency wherein the taxpayer indicates that he overpaid taxes to the agency and requests a refund of the overpayment and/or a credit against current or future taxes for the overpayment.

(t) "Resident," when used to describe a taxpayer or petitioner, means a natural person whose residence and place of abode is within the State of Mississippi.

(u) "Tag" means a type of license tag, plate or registration card for a motor vehicle or trailer that the agency is authorized under the Mississippi Motor Vehicle Privilege Tax Law, Section 27-19-1 et seq., or under the Motor Vehicle Dealer Tag Permit Law, Section 27-19-301 et seq., to issue or approve before issuance, but does not include other types of license tags or plates issued by the county tax collectors except for personalized license tags and only to the extent that the agency determines under Section 27-19-48 that a personalized license tag applied for is considered obscene, slandering, insulting or vulgar in ordinary usage or demands the surrender or orders the seizure of the tag where issued in error.

(v) "Tag holder" means the person in whose name a tag is registered or the person applying for a tag.

(w) "Tag penalty" means the penalties imposed under Sections 27-19-63 and 27-51-43 for any delinquency in the payment of motor vehicle privilege tax and ad valorem tax on a motor vehicle which can be waived by the agency for good reason shown. Pursuant to Section 27-51-103, imposition of this ad valorem tag penalty at the maximum rate of twenty-five percent (25%) also results in ineligibility for the credit against motor vehicle ad valorem taxes provided by that statute. Waiver of the twenty-five percent (25%) delinquency penalty by the agency under Section 27-51-43 shall reinstate credit eligibility.

(x) "Tax" means a tax, fee, penalty and/or interest which the agency is required by either general law or by local and private law to administer, assess and collect.

(y) "Taxpayer" means a person who is liable for or paid any tax to the agency.

(z) "Title" means a title to a motor vehicle or manufactured housing issued by the agency under the Mississippi Motor Vehicle Title Law, Section 63-21-1 et seq.

(aa) "Title interest holder" shall mean the owner or lienholder in a motor vehicle or manufactured housing as indicated on a title issued by the agency or as indicated on an application to the agency for the issuance of a title.

SOURCES: Laws, 2005, ch. 499, § 1; Laws, 2007, ch. 400, § 2; Laws, 2009, ch. 492, § 113; Laws, 2010, ch. 388, § 8; Laws, 2014, ch. 476, § 15, effective from and after January 1, 2015.

Editor's Note — Laws of 2005, ch. 499, §§ 37 and 38, effective July 1, 2005, provide as follows:

"SECTION 37. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty or the suspension, revocation, surrender, seizure or denial of permit, tag or title or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, denial, notice of the intent to suspend, notice of the intent to revoke, request for surrender or order for seizure is before July 1, 2005. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to July 1, 2005 are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any assessment, refund claim, request for waiver of a tag penalty or the suspension, revocation, surrender, seizure or denial of a permit, tag or title where the initial date of said assessment, refund claim, tag penalty, denial, notice of the intent to suspend, notice of the intent to revoke, request for surrender or order for seizure is before July 1, 2005.

"SECTION 38. Sections 1 through 10 of this act shall be codified as a separate chapter in Title 27, Mississippi Code of 1972."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 476, § 19, effective January 1, 2015 provides:

"SECTION 19. Nothing in Sections 15, 16 or 17 of this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty or claim for tax credits or incentives or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any assessment, refund claim, request for waiver of a tag penalty or claim for tax credits or incentives where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective."

Sections 15, 16 and 17 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-77-1, 27-77-5 and 27-77-7. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Commissioner of the department of revenue, see §§ 27-3-3, 27-3-4.

Board of tax appeals, see § 27-4-1 et seq.

Appeal procedure for denial of application or request for permit, IFTA license, tag or title, see § 27-77-11.

Appeal procedure for revocation of IFTA license, see § 27-77-12.

§ 27-77-3. Board of review created; board may perform duties en banc or in panels; quorum requirement; chairman or presiding officer.

(1) There is hereby created a board of review within the agency to conduct the duties assigned to it in this chapter and any other responsibility as assigned by the commissioner. The board of review shall be composed of qualified employees of the agency appointed to the board by the commissioner. The commissioner shall determine the number of members on the board of review and may increase or decrease this number as needed. The commissioner is authorized to remove and/or replace a member of the board of review with or without cause.

(2) The board of review may perform its duties and responsibilities en banc or in panels of not less than three (3) members. When an appeal or other matter is considered by a panel, only the members on that panel may deliberate and vote on the appeal or matter being considered. The decision of a panel shall be deemed the final decision of the board of review. Nothing in this section shall prevent a member of the board of review from attending and/or participating in a hearing on an appeal being conducted before a panel on which he is not a member.

(3) No business shall be transacted by either the board of review en banc or by a panel of the board of review without the presence of a quorum. Three (3) members shall constitute a quorum for both the board of review and a panel of the board of review.

(4) The commissioner shall designate one (1) member of the board of review to be the chairman of the board of review. The chairman of the board of review shall preside at any meeting or hearing of the board of review en banc and at any meeting or hearing of a panel of the board of review where he is a member of that panel. In case of the absence of the chairman of the board of review at a meeting or hearing of the board of review en banc or in the case of a meeting or hearings of a panel of which he is not a member, the chairman of the board of review shall designate another member of the board of review to preside at the meeting or hearing. If circumstances do not permit such designation prior to the meeting or hearing being convened, the member of the board of review with the most tenure on the board of review shall preside. The presiding officer of a meeting or hearing of the board of review en banc or of a panel of the board of review, shall be responsible for the taking of minutes of such meeting or hearing.

SOURCES: Laws, 2005, ch. 499, § 2, eff from and after July 1, 2005.

§ 27-77-5. Appeals from Department of Revenue actions; appeal must be in writing; notice and hearing; appeal to Board of Tax Appeals from decision of board of review; hearing before Board of Tax Appeals; withdrawal of appeal.

(1) Any taxpayer aggrieved by an assessment of tax by the agency, by the agency's denial of a refund claim, by the denial of a waiver of tag penalty, or the denial of a claim to tax credits or incentives, and who wishes to contest the action of the agency shall, within sixty (60) days from the date the agency mailed or delivered written notice of the action, file an appeal in writing with the Board of Review requesting a hearing and correction of the contested action specifying in detail the relief requested and any other information that might be required by regulation. Even after an appeal is filed with the Board of Review, the agency retains the authority to change the assessment, the denial of refund claim or the denial of tag penalty being appealed.

(2) Upon receipt of a timely written appeal from a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, a hearing shall be scheduled before the Board of Review unless it is determined that the relief requested in the written appeal should be granted without a hearing. A notice of the hearing shall be mailed to the taxpayer advising the taxpayer of the date, time and location of the hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to, and granted by, the Board of Review to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the Board of Review or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(3) At a hearing before the Board of Review on a tax assessment, denial of refund claim, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, the Board of Review shall try the issues presented, according to law and the facts and within the guidelines established by regulation. The hearing before the Board of Review shall be informal and no official transcript will be made of the hearing. At the earliest practical date after the hearing, the members of the Board of Review that heard the appeal shall make a determination on the matter presented and notify the taxpayer of its findings by mailing a copy of its order to the taxpayer. If the order involves the appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty. If in the order the Board of Review orders the taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date the Board of Review mailed the order, pay the amount ordered to be paid or appeal the order of the Board of Review to the Board of Tax Appeals. After the sixty-day period, if an appeal is not filed by the taxpayer with the Executive Director of the Board of Tax Appeals and the tax determined by the Board of Review is not paid, the agency shall proceed to collect the tax assessment as determined by the Board of Review.

(4) Any taxpayer aggrieved by an order of the Board of Review affirming a tax assessment, the denial of a refund claim, the denial of a waiver of tag penalty, or the denial of a claim to tax credits or incentives, and who wishes to contest the order shall, within sixty (60) days from the date the Board of Review mailed the order being contested, file an appeal to the Board of Tax Appeals. The appeal shall be in writing and shall request a hearing and reversal or modification of the order of the Board of Review, specify in detail the relief requested and contain any other information that might be required by regulation, and be filed with the executive director. At the time of filing his appeal with the executive director, the taxpayer shall also file a copy of his written appeal with the Board of Review. Even after an appeal is filed with the Executive Director of the Board of Tax Appeals, the Board of Review retains the authority to amend and/or correct the order being appealed at any time prior to a decision by the Board of Tax Appeals on the appeal. Failure to timely file a written appeal with the executive director within the sixty-day period shall make the order of the Board of Review final and not subject to further review by the Board of Tax Appeals or a court, other than as to the issue of whether a written appeal from the order of the Board of Review was timely filed with the executive director. If the Board of Review shall not issue an order within six (6) months of a hearing, the taxpayer may treat the failure to issue an order as a denial of the relief requested in the hearing and appeal such deemed denial to the Board of Tax Appeals as provided in this section. A taxpayer's filing or failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal with the Board of Tax Appeals upon the Board of Review's issuance of a subsequent order in the manner provided for in this section.

(5) Upon receipt of a written appeal from an order of the Board of Review affirming a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, the executive director shall schedule a hearing before the Board of Tax Appeals on the appeal. A notice of this hearing shall be mailed to the taxpayer and the agency advising them of the date, time and location of hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to and granted by the Executive Director of the Board of Tax Appeals to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the executive director or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(6)(a) At any hearing before the Board of Tax Appeals on an appeal of an order of the Board of Review affirming a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing, the Board of Tax Appeals shall conduct a hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions of the Department of

Revenue being appealed, according to the law and the facts and pursuant to any procedural guidelines established by regulation.

(b) At a hearing of any action brought under this section, the Board of Tax Appeals shall give no deference to the decision of the Board of Review, but shall give deference to the department's interpretation and application of the statutes as reflected in duly enacted regulations and other officially adopted publications. The Board of Tax Appeals shall conduct a hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions being appealed. The Board of Tax Appeals shall decide all factual and legal questions presented, including those as to legality and the amount of tax or refund due as well as whether and to what extent the imposition of interest and/or penalties is warranted under the facts of the case, and if it finds that the tax assessment, denial of refund claim or other action of the agency in issue is incorrect or invalid, in whole or in part, it shall determine the amount of tax or refund due, including interest and, if applicable, penalty to date, and enter such order or judgment as it deems proper. Interest and penalty included in this determination shall be computed by the Board of Tax Appeals based on the methods for computing penalty and interest as specified by law for the type of tax in issue, and the Board of Tax Appeals shall have the same discretion as the commissioner in determining whether and to what extent such amounts are warranted under the facts of the case. The rules of evidence shall be relaxed at the hearing.

(c) Any appeal to chancery court from an order of the Board of Tax Appeals resulting from this type of hearing shall include a full evidentiary judicial hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the department's action being appealed. No official transcript shall be made of this hearing before the Board of Tax Appeals.

(d) After reaching a decision on the issues presented, the Board of Tax Appeals shall enter its order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the taxpayer and the agency. If the order involves an appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty.

(e) If the Board of Tax Appeals shall not issue an order within nine (9) months of a hearing, the taxpayer may treat the failure to issue an order as a denial of the relief requested in the hearing and appeal such deemed denial to the chancery court as provided in Section 27-77-7. A taxpayer's filing or failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal with the chancery court upon the Board of Tax Appeals' issuance of a subsequent order in the manner provided for in Section 27-77-7.

(7) If in its order the Board of Tax Appeals orders a taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date the Board of Tax Appeals mailed the order, pay the amount ordered to be paid or properly

appeal the order of the Board of Tax Appeals to chancery court as provided in Section 27-77-7. After the sixty-day period, if the tax determined by the Board of Tax Appeals to be due is not paid and an appeal from the Board of Tax Appeals order has not been properly filed, the agency shall proceed to collect the tax assessment as affirmed by the Board of Tax Appeals. If in its order the Board of Tax Appeals determines that the taxpayer has overpaid his taxes and an appeal from the Board of Tax Appeals order has not been properly filed in chancery court, the agency shall, within sixty (60) days from the date the Board of Tax Appeals mailed its order, refund or credit to the taxpayer, as provided by law, the amount of overpayment as determined and set out in the order.

(8) At any time after the filing of an appeal to the Board of Review or from the Board of Review to the Board of Tax Appeals under this section, an appeal can be withdrawn. Such a withdrawal of an appeal may be made voluntarily by the taxpayer or may occur involuntarily as a result of the taxpayer failing to appear at a scheduled hearing, failing to make a written submission or electronic transmission in lieu of attendance at a hearing by the date specified or by the hearing date, if no date was specified, or by any other act or failure that the Board of Review or the Board of Tax Appeals determines represents a failure on the part of the taxpayer to prosecute his appeal. Any voluntary withdrawal shall be in writing or by electronic transmission and sent by the taxpayer or his designated representative to the chairman of the Board of Review, if the appeal being withdrawn is to the Board of Review, or to the executive director, if the appeal being withdrawn is to the Board of Tax Appeals. If the withdrawal of appeal is involuntary, the administrative appeal body from whom the appeal is being withdrawn shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn, whether voluntary or involuntary, the action from which the appeal was taken, whether a tax assessment, a denial of refund claim, a denial of waiver of tax penalty, or the denial of a claim to tax credits or incentives, or an order of the Board of Review, shall become final and not subject to further review by the Board of Review, the Board of Tax Appeals or a court, other than as to the issue of whether a taxpayer's actions or inactions constituted a failure on the part of the taxpayer to prosecute his appeal. The agency shall then proceed in accordance with law based on such final action.

(9) Nothing in this section shall bar a taxpayer from timely applying to the commissioner as otherwise provided by law for a tax refund or for a revision in tax.

(10) Any appeal or other filing with the Board of Review or Board of Tax Appeals pursuant to this section shall be considered timely if it is hand delivered during the regular office hours of the recipient by the due date of such filing, or if it is mailed, postmarked or shipped by such due date. Any appeal or other filing to the Board of Review or Board of Tax Appeals pursuant to this section shall also be considered timely if electronically transmitted via electronic mail, electronic filing or facsimile by midnight of the due date for such filing. The timeliness of such electronic filing shall be determined in all

instances based on the local time zone of the recipient. If the due date for any appeal or other filing with the Board of Review or Board of Tax Appeals should fall on a Saturday, Sunday, official state holiday, or other day on which the Department of Revenue or Board of Tax Appeals is closed, the due date for the filing shall be the next business day in which the Department of Revenue or Board of Tax Appeals is open.

SOURCES: Laws, 2005, ch. 499, § 3; Laws, 2009, ch. 492, § 114; Laws, 2014, ch. 476, § 16, effective from and after January 1, 2015.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 476, § 19, effective January 1, 2015, provides:

"SECTION 19. Nothing in Sections 15, 16 or 17 of this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty or claim for tax credits or incentives or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any assessment, refund claim, request for waiver of a tag penalty or claim for tax credits or incentives where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective."

Sections 15, 16 and 17 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-77-1, 27-77-5 and 27-77-7. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Board of Tax Appeals to have jurisdiction over all administrative appeals to the board from decisions of the review board and administrative hearing officers of the Department of Revenue under this section, see § 27-4-3.

JUDICIAL DECISIONS

1. In general.
2. Injunctive relief.
3. Applicability of doctrine of res judicata.

4. Legal malpractice.

1. In general.

Circuit court erred in denying relief to a seller in its action to collect the sales taxes that it paid because the buyer agreed to the pay the sales tax that was accessed to the seller, the liability of the purchaser was for the amount of the sales tax imposed on the seller, and the trial court erred as a matter of law in relitigating that issue. Nortrax S., Inc. v. Thornhill Forestry Serv., 204 So. 3d 837 (Miss. Ct. App. 2016), writ of certiorari denied by 205 So. 3d 1081, 2016 Miss. LEXIS 492 (Miss. Dec. 1, 2016).

In an action by a taxpayer against the chairman of the state tax commission and the personal representative of a deceased former chairman thereof to recover sales taxes paid to the state as a result of two additional assessments, the trial court properly sustained the deceased former chairman's personal representative's demurrer in view of ample statutory provisions for the payment of judgments in favor of taxpayers. N. & W. Indus., Inc. v. McKeigney, 230 Miss. 566, 93 So. 2d 481 (1957).

Mere irregularities in the assessment will not avail to support the recovery back of alleged illegally exacted taxes. Anderson Bros. Corp. v. Stone, 227 Miss. 26, 85 So. 2d 767 (1956).

Where the owner of a number of vending machines leased them to a military post exchange under a rental contract arrangement whereby the merchandise was the property of the exchange until sold, the sales were made by the exchange, and the owner was to account for the sales receipts to the exchange and receive a percentage thereof for service and rental, the owner was not liable for sales taxes and was entitled to recover back taxes illegally exacted, since under the terms of the contract the sales were made by the post exchange. Stevens Enters. v. Stone, 226 Miss. 806, 85 So. 2d 461 (1956).

Where under a concessionaire contract between the owner of vending machines and a military post exchange, the owner retained control of the machines, paying a percentage of gross sales to the exchange, and where the owner retained all daily sales and remitted to the post exchange its share, the merchandise remaining the property of the owner of the machines until sold, the sales were those of the owner of the machines, and he was not entitled to recover back sales taxes as illegally exacted. Stevens Enters. v. Stone, 226 Miss. 806, 85 So. 2d 461 (1956).

Taxes improperly collected from the taxpayer may be recovered whether payment is made before warrant is issued or by means of a warrant, upon the following conditions: (1) the taxes must have been improperly charged and the taxpayer required to pay the same; (2) the plaintiff must allege and prove that he alone bore the burden of the tax sued for, and he did not directly or indirectly collect the tax from his customers; and (3) the suit must be filed within three years from the time the return was filed or from the time the assessment was made; and it is not necessary that taxpayer protest against the payment of the tax or make any demand to have the same refunded in order to maintain the suit. Stevens Enters. v. Stone, 226 Miss. 806, 85 So. 2d 461 (1956).

Where taxpayer is entitled to recover illegally collected sales tax, he is entitled to interest from and after the date suit was filed. Stevens Enters. v. Stone, 226 Miss. 806, 85 So. 2d 461 (1956).

Taxpayer's right to sue state tax commission for refund under this section [Code 1942, §§ 10123, 10124] was merged in final judgment against him in certiorari proceedings in circuit court brought to test his liability for sales tax assessment, which judgment was affirmed by the supreme court and certiorari denied in the supreme court of the United States, and thereafter paid by the taxpayer. Viator v. Stone, 203 Miss. 109, 33 So. 2d 310 (1948), suggestion of error sustained, 203 Miss. 115, 37 So. 2d 1 (1948), appeal dismissed, 336 U.S. 948, 69 S. Ct. 882, 93 L. Ed. 1104 (1949).

The new and special jurisdiction created by this section [Code 1942, §§ 10123, 10124] vests in the circuit court of the county wherein the taxpayer resides or is located exclusive jurisdiction to determine issues arising between a sales taxpayer and the state tax commission. Viator v. Stone, 201 Miss. 487, 29 So. 2d 274 (1947), error overruled, 201 Miss. 504, 29 So. 2d 658 (1947).

One purpose of this provision [Code 1942, §§ 10123, 10124] was to induce prompt payment to the state tax commissioner, and another purpose was to give the taxpayer so paying the right to sue for recovery of the tax, without the sacrifice, on his part, of any of his rights because he had yielded to the threatening provisions of the law inducing such payments. Independent Linen Serv. Co. v. Stone, 192 Miss. 832, 6 So. 2d 110 (1942).

2. Injunctive relief.

This section [Code 1942 §§ 10123, 10124] does not contemplate mere appeal on the records as by certiorari but inescapably implies an original action in which the entire merits of the case may be heard and the liability of the taxpayer adjudged and computed in the light of his determined status, and the remedy at law is therefore clear, adequate and complete, and therefore a taxpayer was not entitled to enjoin the collection of an additional privilege tax assessed at a hearing by the state tax commission. Stone v. Kerr, 194 Miss. 646, 10 So. 2d 845 (1942).

If the statutory provision in a sales tax statute to the effect that no injunction should be awarded by any court or judge to restrain the collection of the taxes imposed by the act or to restrain the enforcement of the act violated the constitutional provision prescribing the jurisdiction of the chancery court, as to which no opinion was rendered, such fact would have no effect on the remainder of the act which would remain in full force and effect. Viator v. State Tax Comm'n, 193 Miss. 266, 5 So. 2d 487 (1942), appeal dismissed, cert. denied, 316 U.S. 644, 62 S. Ct. 1109, 86 L. Ed. 1728 (1942), reh'g denied, 316 U.S. 711, 62 S. Ct. 1275, 86 L. Ed. 1777 (1942).

3. Applicability of doctrine of res judicata.

Taxpayers who failed to appeal a Mississippi Tax Commission assessment within 30 days were barred by the doctrines of res judicata and collateral estoppel from seeking relief more than two years later under Miss. Code Ann. § 27-73-1; even if such relief were allowed, it was time barred under Miss. Code Ann. § 27-73-5 where the facts showed that four years and nine months had passed between the date of assessment and the date suit was filed. Davis v. AG, 935 So. 2d 856 (Miss. 2006).

Until a protesting taxpayer had had the merits of his case considered in a suit to recover the taxes allegedly improperly collected, prior remedies attempted did not constitute res adjudicata. Viator v. Stone, 203 Miss. 109, 33 So. 2d 310 (1948), suggestion of error sustained, 203 Miss. 115, 37 So. 2d 1 (1948), appeal dismissed, 336 U.S. 948, 69 S. Ct. 882, 93 L. Ed. 1104 (1949).

Prior proceedings, involving sales tax assessment by the commission, appeal by certiorari therefrom, issuance of execution to collect the tax by the commission and the suing out of an injunction to prevent the collection of such tax, were not proceedings on the merits such as to bar the taxpayer from bringing suit to recover under this section [Code 1942, §§ 10123, 10124]. Viator v. Stone, 203 Miss. 109, 33 So. 2d 310 (1948), suggestion of error sustained, 203 Miss. 115, 37 So. 2d 1 (1948), appeal dismissed, 336 U.S. 948, 69 S. Ct. 882, 93 L. Ed. 1104 (1949).

The doctrine of res judicata does not apply in an action brought under this section [Code 1942, §§ 10123, 10124] to recover taxes allegedly charged improperly except to a judgment by the appropriate circuit court determining the matter on its merits. Viator v. Stone, 201 Miss. 487, 29 So. 2d 274 (1947), error overruled, 201 Miss. 504, 29 So. 2d 658 (1947).

4. Legal malpractice.

Legal malpractice claim based on representation before the Mississippi State Tax Commission was not time barred because, pursuant to the discovery rule, a one-sentence notification of a partial loss/partial win at an intermediate stage of an ongoing administrative appeal did not provide sufficient notice of possible malpractice. Donovan v. Burwell, 199 So. 3d 725 (Miss. Ct. App. 2016), writ of certiorari denied en banc by 203 So. 3d 596, 2016 Miss. LEXIS 389 (Miss. Sept. 15, 2016).

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Sale and Use Taxes §§ 266 et seq.

CJS. 84 C.J.S. §§ 708, 786, 826-836, 841-847, 854-858.

85 C.J.S. §§ 1911-1916, 2197-2198.

§ 27-77-7. Judicial review of Board of Tax Appeals' findings and order; petition; surety bond; payment under protest in lieu of bond; payment of uncontested tax by taxpayer; payment of uncontested overpayment by agency; issuance of summons; trial; appeals of chancery court order to Supreme Court.

(1) The findings and order of the Board of Tax Appeals entered under Section 27-77-5 shall be final unless the agency or the taxpayer shall, within sixty (60) days from the date the Board of Tax Appeals mailed the order, file a petition in the chancery court appealing the order. If the petition under this subsection is filed by the taxpayer, the petition shall be filed against the Department of Revenue as respondent. If the petition under this subsection is filed by the agency, the petition shall be filed against the taxpayer as respondent. The petition shall contain a concise statement of the facts as contended by the petitioner, identify the order from which the appeal is being taken and set out the type of relief sought. If in the action, the taxpayer is seeking a refund or credit for an alleged overpayment of any tax other than individual or corporate income tax or franchise tax, the taxpayer shall allege in the petition or in his answer, where the appeal is filed by the agency, that he alone bore the burden of the tax sought to be refunded or credited and did not directly or indirectly collect the tax from anyone else; however, this requirement shall not apply in any case involving a claim for incentives based on payroll withholding or other incentives, rebates or other economic benefits the computation of which is based, in whole or in part, upon taxes withheld or paid. The respondent to the petition has thirty (30) days from the date of service of the petition to file a cross-appeal.

(2) A petition under subsection (1) of this section shall be filed in the chancery court of the county or judicial district in which the taxpayer has a place of business or in the Chancery Court of the First Judicial District of Hinds County, Mississippi; however, a resident taxpayer may file the petition in the chancery court of the county or judicial district in which he is a resident. If both the agency and the taxpayer file a petition under subsection (1) of this section, the appeals shall be consolidated and the chancery court where the taxpayer filed his petition shall have jurisdiction over the consolidated appeal.

(3) Unless otherwise ordered by the chancery court upon motion by the agency, no taxpayer appealing an order of the Board of Tax Appeals under this section shall be required to post security or a bond, or otherwise pay to the agency, under protest or otherwise, any contested taxes, interest, penalties or other amounts. After a petition or cross-appeal is filed by a taxpayer under this section, if the agency believes that its ability to obtain payment from the

taxpayer of the taxes, penalties and interest in issue is jeopardized by its inability to proceed with collection due to the filing of the appeal or cross-appeal by the taxpayer or if the agency believes that the appeal or cross-appeal is being brought to delay payment of the taxes, penalties or interest in issue, the agency may move the chancery court to require the taxpayer to post a bond or other adequate security for the payment of any judgment of the court. Upon consideration of such motion, after notice and hearing, the chancellor shall determine whether a bond or other security is needed to protect the interest of the state in regard to the timely payment of the taxes, penalties and interest in issue. If the chancellor determines that a bond or other security is necessary to protect the interest of the state, the chancellor shall provide the taxpayer sixty (60) days from the date that he enters an order on the motion to post with the clerk of the court the bond or other security that the chancellor determines is needed to protect the state's interest. To avoid the accruing of additional penalty and interest while an appeal is pending, a taxpayer appealing an order of the Board of Tax Appeals affirming a tax assessment may, prior to the filing of the petition, pay to the agency, under protest, the amount ordered by the Board of Tax Appeals to be paid and seek a refund of such taxes, plus interest thereon, in the appeal. The taxpayer shall pay to the agency any tax included in the assessment which he is not contesting. If the petition initiating the appeal is filed by the taxpayer, the payment of the uncontested tax shall be made prior to the expiration of the sixty-day time period for filing a petition under subsection (1) of this section or the commissioner may institute collection proceedings for such uncontested amount. If the petition initiating the appeal is filed by the agency, the payment of the uncontested tax shall be made prior to the expiration of the sixty-day time period for the filing of the petition. Failure of the taxpayer to timely pay the uncontested tax shall not bar the taxpayer from obtaining a reduction, abatement and/or refund of any contested tax in the appeal and shall not result in the taxpayer's appeal or cross-appeal being dismissed or delayed or judgment being entered granting the agency the relief it requested.

(4) In an action under this section resulting from an order of the Board of Tax Appeals involving a refund claim denial, the agency shall refund or credit to the taxpayer, as provided by law, the amount of any overpayment included in the refund claim which the agency does not contest. If the petition initiating the appeal is filed by the agency, the uncontested overpayment shall be paid or credited to the taxpayer prior to the expiration of the sixty-day time period for filing a petition under subsection (1) of this section. If the petition initiating the appeal is filed by the taxpayer, such uncontested overpayment shall be paid or credited to the taxpayer prior to the expiration of the thirty-day time period for the filing of an answer or other response to the petition as provided in subsection (5) of this section. Failure of the agency to timely pay or credit the uncontested overpayment to the taxpayer shall bar the agency from obtaining an affirmation, in whole or in part, of the refund claim denial in issue until the payment or claim is made, but shall not result in the agency's appeal or cross-appeal being dismissed or judgment being entered granting the taxpayer the relief he requested.

(5) Upon the filing of the petition under subsection (1) of this section, the clerk of the court shall issue a summons to the respondent requiring the respondent to answer or otherwise respond to the petition within thirty (30) days of service. Where the agency is the respondent, the summons shall be served on the agency by personal service on the commissioner as the chief executive officer of the agency. The chancery court in which a petition under subsection (1) of this section is properly filed shall have jurisdiction to hear and determine the cause or issues joined as in other cases. In any petition, cross-appeal or answer in which the taxpayer is seeking a refund or credit for an alleged overpayment of any tax other than individual or corporate income tax or franchise tax the taxpayer shall prove by a preponderance of the evidence that he alone bore the burden of the tax sought to be refunded or credited and did not directly or indirectly collect the tax from anyone else; however, this requirement shall not apply in any case involving a claim for incentives based on withholding taxes or other incentives, rebates or other economic benefits the computation of which is based, in whole or in part, upon taxes withheld or paid. At trial of any action brought under this section, the chancery court shall give no deference to the decision of the Board of Tax Appeals, the Board of Review or the Department of Revenue, but shall give deference to the department's interpretation and application of the statutes as reflected in duly enacted regulations and other officially adopted publications. The chancery court shall try the case de novo and conduct a full evidentiary judicial hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions of the Department of Revenue being appealed. The chancery court is expressly prohibited from trying any action filed pursuant to this section using the more limited standard of review specified for appeals in Section 27-77-13 of this chapter. Based on the evidence presented at trial, the chancery court shall determine whether the party bringing the appeal has proven by a preponderance of the evidence or a higher standard if required by the issues raised, that he is entitled to any or all of the relief he has requested. The chancery court shall decide all factual and legal questions presented, including those as to legality and the amount of tax, refund, tax credit or tax incentive due as well as whether and to what extent the imposition of interest and/or penalties are warranted under the facts of the case, and if it finds that the tax assessment, denial of the claim for a tax refund, tax credit or tax incentive or other action of the agency in issue is incorrect or invalid, in whole or in part, it shall determine the amount of tax or refund due, including interest and, if applicable, penalty to date, and enter such order or judgment as it deems proper. Interest and penalty included in this determination shall be computed by the court based on the methods for computing penalty and interest as specified by law for the type of tax in issue, and the court shall have the same discretion as the commissioner in determining whether and to what extent such amounts are warranted under the facts of the case. When the chancery court determines that an overpayment exists, the determination as to whether such overpayment shall be refunded to the taxpayer or credited against the

taxpayer's future taxes shall be made by the chancery court based on the method for handling overpayments as specified by the law for the type of tax in issue. Either the agency or the taxpayer, or both, shall have the right to appeal from the order of the chancery court to the Supreme Court as in other cases. If an appeal is taken from the order of the chancery court, any bond or other security required to be posted by order of the chancery court shall continue to remain in place until a final decision is rendered in the case.

SOURCES: Laws, 2005, ch. 499, § 4; Laws, 2009, ch. 492, § 115; Laws, 2014, ch. 476, § 17, effective from and after January 1, 2015.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 476, § 19, effective January 1, 2015, provides:

"SECTION 19. Nothing in Sections 15, 16 or 17 of this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty or claim for tax credits or incentives or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any assessment, refund claim, request for waiver of a tag penalty or claim for tax credits or incentives where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective."

Sections 15, 16 and 17 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-77-1, 27-77-5 and 27-77-7. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Board of Tax Appeals, see § 27-4-1 et seq.

JUDICIAL DECISIONS

1. Burden of proof.
2. Tax appeal.

1. Burden of proof.

Chancery court properly limited its analysis to determining whether a taxpayer had proven that it was entitled to reversal of the Mississippi State Tax Commission's decision for any of the prescribed legal bases for reversing an agency decision; under the statute, the chancery court must hold a judicial hearing to determine whether the taxpayer challenging the Commission decision can prove entitlement to any or all of the relief requested by a preponderance of the evidence. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 134 S. Ct. 2872, 189 L. Ed. 2d 833, 2014 U.S. LEXIS 4578, 82 U.S.L.W. 3746 (U.S. June 30, 2014).

Instruction to "try the case de novo" is misdirected because the statute provides a judicial forum to try anew (or for the first time) the legal issues raised by the taxpayer in chancery court. Its limited purpose is only to examine whether the Mississippi State Tax Commission's decision was supported by substantial evidence, was not arbitrary and capricious, was within the Commission's power to make, and did not violate the taxpayer's statutory or constitutional rights. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 134 S. Ct. 2872, 189 L. Ed. 2d 833, 2014 U.S. LEXIS 4578, 82 U.S.L.W. 3746 (U.S. June 30, 2014).

Court of appeals erred by reversing a judgment on standard-of-review and burden-of-proof grounds because it improperly construed the statute as imposing a de-novo standard of review; in a taxpayer's suit in chancery court appealing a final judgment of the Mississippi State Tax Commission, as in all other judicial proceedings, the party petitioning the court for relief bears the burden of proving its claims by a preponderance of the evidence or a higher standard, if required by the issues raised. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 134 S. Ct. 2872, 189 L. Ed. 2d 833, 2014 U.S. LEXIS 4578, 82 U.S.L.W. 3746 (U.S. June 30, 2014).

Court of appeals erred by reversing a judgment requiring a taxpayer to prove that the Mississippi State Tax Commission's decision was unsupported by substantial evidence, arbitrary and capricious, beyond its power, or in violation of a statutory or constitutional right of the taxpayer because the chancery court applied the proper standard of review and burden of proof; the statute places the burden on the taxpayer challenging a Commission decision to prove its entitlement to relief. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 134 S. Ct. 2872, 189 L. Ed. 2d 833, 2014 U.S. LEXIS 4578, 82 U.S.L.W. 3746 (U.S. June 30, 2014).

2. Tax appeal.

Chancery court properly dismissed a taxpayer's appeal for failure to post a bond or pay her taxes because the taxpayer admitted that she neither posted a bond nor paid her assessed taxes under protest, and that requirement had to be fulfilled for the chancery court to have appellate jurisdiction; while the Legislature eliminated the bond or payment requirement, the saving clause in Section 19 of Chapter 476, Laws of 2014 (HB 799), left the taxpayer subject to the preamendment version of the statute. Robinson v. Morgan, 214 So. 3d 188 (Miss. 2017).

Chancery court properly dismissed a taxpayer's appeal for failure to post a bond or pay her taxes because the taxpayer admitted that she neither posted a bond nor paid her assessed taxes under protest, and that requirement had to be fulfilled for the chancery court to have appellate jurisdiction; while the Legislature eliminated the bond or payment requirement, the saving clause in Section 19 of Chapter 476, Laws of 2014 (HB 799), left the taxpayer subject to the pre-amendment version of the statute. Robinson v. Morgan, 214 So. 3d 188 (Miss. 2017).

Chancellor properly dismissed taxpayers' petition because the chancery court lacked appellate jurisdiction over the taxpayers' appeal from the Mississippi Board of Tax Appeals in that the taxpayers failed to comply with the statutory requirements by either paying their taxes under protest before appealing, or by posting a surety bond with their petition. Southside, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 277 (Miss. 2014).

In a taxation dispute, a chancellor erred by vacating a decision from the Mississippi Department of Revenue (MDOR) that an airplane dealership had to pay a use tax, which was the same as the sales-tax rate, where substantial documentary evidence supported the conclusions that the dealership had been using for charters the airplanes that it was trying to sell. This determination was outside of the chancery court's appellate purview, which was limited to deciding if the MDOR's decision was supported by substantial evidence or was arbitrary and capricious. Miss. Dep't of Revenue v. Johnny Reb Aviation, LLC, 167 So. 3d 1266 (Miss. Ct. App. 2014), writ of certiorari denied en banc by 168 So. 3d 962, 2015 Miss. LEXIS 356 (Miss. July 2, 2015).

Chancery court had the authority to rule on the motion for summary judgment filed by the Mississippi Department of Revenue because whether a corporation's "deferred revenue" account was subject to franchise tax was a question of law, and nothing in the statute prohibits the chancery court from granting summary judgment when no genuine disputes of material fact exist. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Chancery court properly exercised jurisdiction over a corporation's appeal of a tax assessment because the surety bond the corporation filed satisfied the statutory requirements; the bond would have been enforceable against the surety because it clearly bound the Mississippi Department of Revenue and conditioned the obligation to pay on the fact the corporation appealed the judgment of the Board of Tax Appeals. Miss. Dep't of Revenue v. Isle of Capri Casinos, Inc., 131 So. 3d 1192 (Miss. 2014).

§ 27-77-9. Suspension, surrender, seizure or revocation of permit, tag or title; notice of intent; written request for show cause hearing; board of review or hearing officer to conduct hearing; order; appeal to Board of Tax Appeals; notice and hearing; withdrawal of appeal.

(1) If the agency determines that there is a basis for suspension, surrender, seizure or revocation of a permit, tag or title issued or approved by the agency, the agency shall give the permittee, tag holder, title interest holder in the permit, tag or title, written notice of its intent to suspend, revoke or to order the surrender and/or seizure of the permit, tag or title. The notice of intent shall be mailed or hand delivered to the permittee, tag holder or title interest holder involved, shall set forth the facts and conduct that provide the basis for the intended action and shall advise the permittee, tag holder or title interest holder involved that he has thirty (30) days from the date the agency mailed or delivered the notice of the action to file with the board of review a written request for a hearing on the intended action. If the permittee, tag holder or title interest holder involved fails to file a written request with the board of review for a hearing on the intended action within the thirty-day period, the intended action shall automatically go into effect on the thirty-first

day after the date of the notice of intent without any further action by the agency. The agency retains jurisdiction to reinstate, reduce or remove a suspension and/or return the permit, tag or title suspended, revoked, surrendered or seized under this provision.

(2) Upon receipt of a timely filed written request for a hearing on the intended suspension, surrender, seizure or revocation of the permit, tag or title in issue, the person filing the request shall be advised of the date, time and location of a show cause hearing that will be held a minimum of thirty (30) days from the date of the notice. In the case of a request for hearing involving an intended action regarding a title, the notice of hearing shall also be mailed to any other title interest holders in the motor vehicle or manufactured housing in issue. At the hearing, the person requesting the hearing shall show cause why the proposed action should not be taken. The show cause hearing shall be informal and the rules of evidence shall be relaxed. The hearing shall be conducted by the board of review or by a single hearing officer selected by the chairman of the board of review from a pool of qualified individuals designated by the commissioner to serve as administrative hearing officers. The person that requested the hearing or his designated representative shall attend the hearing unless a request is made to, and granted by, the board of review or the designated hearing officer to allow the person to submit his position in writing or by electronic transmission in lieu of attending the hearing. Failure of the person requesting the hearing or his designated representative to attend a hearing or submit his position in writing or by electronic transmission in lieu of attendance by the date specified by the board of review or designated hearing officer or by the hearing date, if no date is specified, shall constitute an involuntary withdrawal of the appeal. As soon as practical after the show cause hearing, the hearing officer or the members of the board of review that conducted the hearing shall make a determination as to whether the intended action or any other action should be taken in regard to the permit, tag or title in issue. The hearing officer or board of review shall enter an order based on this determination and a copy of this order shall be mailed to the permittee, tag holder or title interest holder involved notifying same of the decision and the action taken.

(3) The order of the hearing officer or the board of review in regard to a show cause hearing shall be final unless, within thirty (30) days from the date the hearing officer or board of review mailed the order, the permittee, tag holder or title interest holder appeals the order to the Board of Tax Appeals. The appeal shall be in writing and request a hearing and reversal or modification of the order of the hearing officer or board of review, specify in detail the relief requested, contain any other information that might be required by regulation and be filed with the executive director. The person filing the appeal with the executive director shall also file a copy of his written appeal with the board of review. Even after an appeal is filed with the executive director, the board of review or hearing officer who entered the order appealed retains the authority to amend and/or correct this order at any time prior to a decision by the Board of Tax Appeals on the appeal. Failure to timely file a

written appeal with the executive director within the thirty-day period shall make the order of the hearing officer or the board of review being appealed final and not subject to further review by the Board of Tax Appeals or a court other than as to the issue of whether a written appeal from the order of the hearing officer or board of review was timely filed with the executive director.

(4) Upon receipt of a written appeal from an order of a hearing officer or the board of review regarding a show cause hearing on a permit, tag or title, the executive director shall schedule a hearing before the Board of Tax Appeals on this appeal. A notice of the hearing shall be mailed to the person who filed the appeal and the agency to advise them of the date, time and location of hearing. In the case of an appeal from a show cause hearing on a title, the notice of hearing shall also be mailed to any other title interest holders in the motor vehicle or manufactured housing in issue. The person who filed the appeal or his designated representative shall attend the hearing. Failure of this person or his designated representative to attend a hearing shall constitute an involuntary withdrawal of the appeal.

(5) At any hearing before the Board of Tax Appeals on an appeal of an order regarding a show cause hearing on a permit, tag or title, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing the Board of Tax Appeals shall try the issues presented according to law and the facts and pursuant to any guidelines established by regulation. The rules of evidence shall be relaxed at the hearing and the hearing shall be taken down by a court reporter. After reaching a decision on the issues presented, the Board of Tax Appeals shall enter an order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the person who filed the appeal and the agency to notify them of the findings and decision of the Board of Tax Appeals. In the case of an appeal involving a title, a copy of the order of the Board of Tax Appeals shall also be mailed to any other title interest holder in the motor vehicle or manufactured housing in issue.

(6) At any time after the filing of an appeal with the board of review under this section, an appeal may be withdrawn. A withdrawal of an appeal can be made voluntarily by the person appealing or may occur involuntarily as the result of his failure to appear at a scheduled hearing, or by any other act or failure that the hearing officer or the board of review determines represents a failure on the part of that person to prosecute his appeal. A voluntary withdrawal shall be in writing or by electronic transmission and sent from the person appealing or his designated representative to the chairman of the board of review or to the hearing officer designated to hear the matter. If the withdrawal of appeal is involuntary, the board of review or the hearing officer designated to hear the matter shall note on its minutes or by order the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal to the board of review under subsection (1) of this section is withdrawn, whether voluntary or involuntary, the intended suspension, surrender, seizure or revocation from which the appeal was taken shall become final and not subject to further review by the Board of Tax Appeals or a court.

The agency shall then proceed in accordance with law based on such final action.

(7) At any time after the filing of an appeal with the Board of Tax Appeals under this section, the appeal may be withdrawn. A withdrawal of an appeal can be made voluntarily by the person appealing or may occur involuntarily as the result of the failure to appear at a scheduled hearing, or by any other act or failure that the Board of Tax Appeals determines to represent a failure on the part of that person to prosecute his appeal. A voluntary withdrawal shall be in writing or by electronic transmission and sent from the person appealing or his designated representative to the executive director. If the withdrawal of the appeal is involuntary, the Board of Tax Appeals shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn under this section, whether voluntary or involuntary, the order from the show cause hearing from which the appeal was taken shall become final and not subject to further review by the Board of Tax Appeals or a court. The agency shall then proceed in accordance with law based on the final order.

(8) Any appeal or other filing with the board of review or Board of Tax Appeals pursuant to this section shall be considered timely if it is hand delivered during the regular office hours of the recipient by the due date of such filing, or if it is mailed, postmarked or shipped by such due date. Any appeal or other filing with the board of review or Board of Tax Appeals pursuant to this section shall also be considered timely if electronically transmitted via electronic mail, electronic filing or facsimile by midnight of the due date for such filing. The timeliness of such electronic filing shall be determined in all instances based on the local time zone of the recipient. If the due date for any appeal or other filing with the board of review or Board of Tax Appeals should fall on a Saturday, Sunday or official state holiday, or other day on which the Department of Revenue or Board of Tax Appeals is closed, the due date for the filing shall be the next business day in which the Department of Revenue or Board of Tax Appeals is open.

SOURCES: Laws, 2005, ch. 499, § 5; Laws, 2009, ch. 492, § 116; Laws, 2016, ch. 323, § 1, eff from and after July 1, 2016.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2016, ch. 323, § 2, effective July 1, 2016, provides:

"SECTION 2. Nothing in this act shall affect or defeat any notice of intent of suspension, surrender, seizure or revocation of a permit, tag or title or the administrative appeal or judicial appeal thereof where the initial date of the notice of intent of suspension, surrender, seizure or revocation of a permit, tag or title is before the date on which this act becomes effective. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any notice of intent of suspension, surrender, seizure or revocation of a permit, tag or title where the initial date of said notice is before the date on which this act becomes effective."

Amendment Notes — The 2016 amendment substituted "the date the agency mailed or delivered the notice of the action to file" for "the date of the notice to file" in the second sentence of (1); substituted "the date the hearing officer or board of review mailed the order" for "the date of the order" in the first sentence of (3); and added (8).

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Board of Tax Appeals to have jurisdiction over all administrative appeals to the board from decisions of the review board and administrative hearing officers of the Department of Revenue under this section, see § 27-4-3.

Review of board of tax appeals' orders pursuant to Section 27-77-9, 27-77-11 or 27-77-12 by Chancery Court, see § 27-77-13.

§ 27-77-11. Denial of application or request for permit, IFTA license, IRP registration, tag or title; notice of denial; appeal to board of review; jurisdiction of agency to reverse appealed denial; notice and hearing; order; appeal to Board of Tax Appeals; notice and hearing; authority of board of review to amend and/or correct appealed order prior to decision by Board of Tax Appeals; withdrawal of appeal.

(1) If the agency determines that an application or request for a permit, IFTA license, IRP registration, tag or title issued or approved by the agency should be denied, the agency shall give the applicant for the permit, IFTA license, IRP registration, tag or title written notice of the denial by mailing or hand delivering the notice to the applicant. In regard to the denial of an application for title, the designated agent who took the application and any other alleged title interest holders as appearing on the application shall also be mailed or hand delivered a copy of the agency's denial of the title application. If the applicant, or in the case of the denial of a title application, any title interest holder appearing on the title application, is aggrieved by the denial and wishes to contest the denial, he shall, within thirty (30) days from the date of the written notice of the denial, file an appeal in writing with the board of review requesting a hearing on the denial that specified in detail the relief requested and contains any other information required by regulation. Failure to timely file a written appeal with the board of review within this thirty-day period shall make final the agency's denial of the permit, IFTA license, IRP registration, tag or title in issue and not subject to further review by the board

of review, the Board of Tax Appeals or a court except as to the issue of whether a written appeal to the board of review was timely filed. Even if an appeal to the board of review is filed under this section, the agency retains jurisdiction to reverse its denial and issue or approve the permit, IFTA license, IRP registration, tax or title involved in the appeal.

(2) Upon receipt of a written appeal by the board of review from a denial of a permit, IFTA license, IRP registration, tag or title, a hearing shall be scheduled before the board of review unless it is determined that the relief requested in the written appeal should be granted without a hearing. A notice of the hearing shall be mailed to the person appealing advising him of the date, time and location of hearing. If the appeal involves the denial of a title, the notice of hearing shall also be mailed to all other title interest holders in the motor vehicle or manufactured housing in issue, including both those that appear on a current title and those that appear on the application that was denied. The notice may contain a statement as to the basis for the denial of the permit, IFTA license, IRP registration, tag or title. The person appealing or his designated representative shall attend the hearing unless a request is made to and granted by the board of review to allow him to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the person appealing, or his designated representative, to attend a hearing or to submit his position in writing or by electronic transmission in lieu of attendance by the date specified by the board of review or by the hearing date, if no date is specified, shall constitute a withdrawal of the appeal.

(3) At a hearing before the board of review on a denial of a permit, IFTA license, IRP registration, tag or title, the board of review shall try the issues presented, according to law and the facts and within the guidelines established by regulation. The hearing before the board of review shall be informal and no official transcript shall be made of the hearing. At the earliest practical date after the hearing, the members of the board of review that heard the appeal shall make a determination of the matter presented and notify the person appealing of its findings by mailing a copy of its order to that person. In the case of a hearing involving the denial of a title, the order shall also be mailed to all other title interest holders in the motor vehicle or manufactured housing in issue, including those that appear on a current title and those that appear on the application that was denied.

(4) The order of the board of review involving the denial of a permit, IFTA license, IRP registration, tag or title shall be final unless within thirty (30) days from the date of the order, the applicant appeals the order to the Board of Tax Appeals. In the case of an order of the board of review involving a review of the denial of a title, any title interest holder in the motor vehicle or manufactured housing in issue may appeal the order to the Board of Tax Appeals. The appeal shall be in writing, request a hearing and reversal or modification of the order of the board of review, specify in detail the relief requested, contain any other information that is required by regulation and be filed with the executive director with a copy sent to the board of review. Failure to timely file a written appeal with the executive director within the thirty-day

period will make the order of the board of review being appealed final and not subject to further review by the Board of Tax Appeals or a court other than as to the issue of whether a written appeal from the order of the board of review was timely filed with the executive director. Even if an appeal to the Board of Tax Appeals is filed under this section, the board of review retains the authority to amend and/or correct its order being appealed prior to a decision by the Board of Tax Appeals on the appeal.

(5) Upon receipt of a written appeal from an order of the board of review involving the denial of a permit, IFTA license, IRP registration, tag or title, the executive director shall schedule a hearing before the Board of Tax Appeals on the appeal. A notice of the hearing shall be mailed to the person who filed the appeal and the agency to advise them of the date, time and location of hearing. In the case of an appeal from an order of the board of review involving the denial of a title, the notice of hearing shall also be mailed to all title interest holders in the motor vehicle or manufactured housing in issue. The person who filed the appeal or his designated representative shall attend the hearing. Failure of this person or his designated representative to attend a hearing shall constitute an involuntary withdrawal of the appeal.

(6) At any hearing before the Board of Tax Appeals on an appeal of an order from the board of review involving the denial of a permit, IFTA license, IRP registration, tag or title, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing, the Board of Tax Appeals shall try the issues presented according to law and the facts and pursuant to any guidelines established by regulation. The rules of evidence shall be relaxed at the hearing and the hearing shall be taken down by a court reporter. After reaching a decision on the issues presented, the Board of Tax Appeals shall enter its order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the person who filed the appeal and the agency with the Board of Tax Appeals to notify them of the findings and decision of the Board of Tax Appeals. In the case of an appeal involving a title, a copy of the order of the Board of Tax Appeals shall also be mailed to all title interest holders in the motor vehicle or manufactured housing in issue.

(7) At any time after the filing of an appeal with the board of review, or from the board of review to the Board of Tax Appeals under this chapter, an appeal can be withdrawn. A withdrawal of an appeal may be made voluntarily by the person who filed the appeal or may occur involuntarily by the person failing to appear at a scheduled hearing, by failing to make a written submission or electronic transmission to the board of review in lieu of attendance by the date specified by the board or by the hearing date, if no date was specified, or by any other act or failure that the board of review or the Board of Tax Appeals determines represents a failure on the part of this person to prosecute his appeal. Any voluntary withdrawal shall be in writing or by electronic transmission and sent by the person appealing or his designated representative to the chairman of the board of review, if the appeal being withdrawn is to the board of review, or to the executive director, if the appeal being withdrawn is to the Board of Tax Appeals. If the withdrawal of appeal is

involuntary, the administrative appeal body from whom the appeal is being withdrawn shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn, whether voluntary or involuntary, the action from which the appeal was taken, whether the original denial or the order of the board of review, shall become final and not subject to further review by the board of review, the Board of Tax Appeals or a court. The agency shall then proceed in accordance with law based on such final action.

SOURCES: Laws, 2005, ch. 499, § 6; Laws, 2007, ch. 400, § 3; Laws, 2009, ch. 492, § 117; Laws, 2010, ch. 388, § 9, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Board of Tax Appeals to have jurisdiction over all administrative appeals to the board from decisions of the review board and administrative hearing officers of the Department of Revenue under this section, see § 27-4-3.

Appeal procedure for revocation of IFTA license, see § 27-77-12.

Review of Board of Tax Appeals' orders pursuant to Section 27-77-9, 27-77-11 or 27-77-12 by Chancery Court, see § 27-77-13.

§ 27-77-12. Revocation or suspension of IFTA license or IRP registration; notice of intent to revoke or suspend; surrender or seizure of IRP credentials for revoked or suspended registration; written request for show cause hearing; withdrawal of request for hearing; appeal of order of hearing officer; withdrawal of appeal.

(1) If the agency determines that there is a basis for revocation or suspension of an IFTA license or IRP registration, the agency shall give the IFTA licensee holding the IFTA license or the IRP registrant holding the IRP registration written notice of its intent to revoke or suspend his IFTA license or IRP registration. The notice of intent shall be mailed or hand delivered to the IFTA licensee or IRP registrant and shall set forth the facts and conduct that provide the basis for the intended revocation or suspension and shall

advise the IFTA licensee or IRP registrant that he has thirty (30) days from the date of the notice to file with the board of review a written request for a hearing on the intended revocation or suspension. If the IFTA licensee or IRP registrant fails to file a written request with the board of review for a hearing on the intended revocation or suspension within the thirty-day period, the IFTA license or IRP registration shall be automatically revoked or suspended as set out in the notice of intent to revoke or suspend on the thirty-first day after the date of the notice without any further action by the agency. The agency retains jurisdiction to reinstate an IFTA license or IRP registration after revocation. Failure of the IFTA licensee or IRP registrant to timely file a written request for a hearing on the intended revocation will bar further review of the revocation or suspension by any court.

(2) If an IRP registration is revoked or suspended, the IRP registrant shall surrender to the agency all IRP credentials for his IRP registration, and if not surrendered, his IRP credentials are subject to seizure and/or removal from the IRP registrant and/or from the vehicle or vehicles.

(3) Upon receipt by the board of review of a timely filed written request for a hearing on the intended revocation or suspension of the IFTA license or IRP registration, the IFTA licensee or IRP registrant filing the request shall be advised of the date, time and location of a show cause hearing that will be held a minimum of thirty (30) days from the date of the notice. At the hearing, the IFTA licensee or IRP registrant shall show cause why his IFTA license or IRP registration should not be revoked. The show cause hearing shall be informal and the rules of evidence shall be relaxed. The hearing shall be conducted by the board of review or by a single hearing officer selected by the chairman of the board of review from a pool of qualified individuals designated by the commissioner to serve as administrative hearing officers. The IFTA licensee, IRP registrant or his designated representative shall attend the hearing unless a request is made to, and granted by, the board of review or the designated hearing officer to allow the IFTA licensee or IRP registrant to submit his position in writing or by electronic transmission in lieu of attending the hearing. Failure of the IFTA licensee or IRP registrant or his designated representative to attend a hearing or submit his position in writing or by electronic transmission in lieu of attendance by the date specified by the board of review or designated hearing officer or by the hearing date, if no date is specified, shall constitute an involuntary withdrawal of the appeal. As soon as practical after the show cause hearing, the hearing officer or the board of review shall make a determination as to whether the IFTA license or IRP registration should be revoked or suspended. The hearing officer or board of review shall enter an order based on this determination and a copy of this order shall be mailed to the IFTA licensee or IRP registrant notifying him of the decision and the action taken.

(4) The order of the hearing officer or the board of review in regard to a show cause hearing shall be final unless, within thirty (30) days from the date of the order, the IFTA licensee or IRP registrant appeals the order to the Board of Tax Appeals. The appeal shall be in writing and request a hearing and

reversal or modification of the order of the hearing officer or board of review, specify in detail the relief requested, contain any other information that might be required by regulation and be filed with the executive director with a copy sent to the board of review. Even after an appeal is filed with the executive director, the board of review or hearing officer who entered the order appealed retains the authority to amend and/or correct this order at any time prior to a decision by the Board of Tax Appeals on the appeal.

(5) Upon receipt of a written appeal from an order of a hearing officer or the board of review regarding a show cause hearing on an IFTA license or IRP registration, the executive director shall schedule a hearing before the Board of Tax Appeals on the appeal. A notice of the hearing shall be mailed to the IFTA licensee, IRP registrant or his designated representative and the agency to advise them of the date, time and location of the hearing. The IFTA licensee, IRP registrant or his designated representative shall attend the hearing. Failure of the IFTA licensee, IRP registrant or his designated representative to attend a hearing shall constitute an involuntary withdrawal of the appeal.

(6) At any hearing before the Board of Tax Appeals on an appeal of an order regarding a show cause hearing on an IFTA license or IRP registration, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing the Board of Tax Appeals shall try the issues presented according to law and the facts and pursuant to any guidelines established by regulation. The rules of evidence shall be relaxed at the hearing and the hearing shall be recorded by a court reporter. After reaching a decision on the issues presented, the Board of Tax Appeals shall enter an order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the person who filed the appeal and the agency to notify them of the findings and decision of the Board of Tax Appeals.

(7) At any time after the filing of a timely written request with the board of review for a hearing on the intended revocation of an IFTA license or IRP registration under this section, the request may be withdrawn. A withdrawal of a request for a hearing on the intended revocation or suspension may be made voluntarily by the person requesting the hearing or may occur involuntarily as a result of a failure to appear at a scheduled hearing, or by any other act or failure that the board of review or designated hearing officer determines represents a failure on the part of that person to pursue his request for a hearing on the intended revocation or suspension. A voluntary withdrawal shall be in writing or by electronic transmission and sent from the person requesting the hearing or his designated representative to the chairman of the board of review or the hearing officer designated to hear the matter. If the withdrawal of the request for a hearing is involuntary, the board of review or the hearing officer designated to hear the matter shall note on its minutes or by order the involuntary withdrawal of the request and the basis for the withdrawal. Once a request for hearing on the intended revocation or suspension is withdrawn, whether voluntary or involuntary, the IFTA license or IRP registration shall be automatically revoked or suspended as set out in the notice of intent being appealed.

(8) At any time after the filing of an appeal with the Board of Tax Appeals under this section, the appeal may be withdrawn. A withdrawal of an appeal can be made voluntarily by the person appealing or may occur involuntarily as the result of the failure to appear at a scheduled hearing, or by any other act or failure that the Board of Tax Appeals determines to represent a failure on the part of that person to prosecute his appeal. A voluntary withdrawal shall be in writing or by electronic transmission and sent from the person appealing or his designated representative to the executive director. If the withdrawal of the appeal is involuntary, the Board of Tax Appeals shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn under this section, whether voluntary or involuntary, the order from the show cause hearing from which the appeal was taken shall become final and not subject to further review by the Board of Tax Appeals or a court. The agency shall then proceed in accordance with law based on the final order.

SOURCES: Laws, 2007, ch. 400, § 1; Laws, 2009, ch. 492, § 118; Laws, 2010, ch. 388, § 10, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the first and third sentences of subsection (1). In the first sentence, "license, IRP registration" was changed to "license or IRP registration" and in the third sentence, "notice or intent" was changed to "notice of intent". The Joint Committee ratified the corrections at its July 22, 2010, meeting.

Editor's Note — Laws of 2007, ch. 400, § 7, effective March 15, 2007, provides:

"SECTION 7. Section 1 of this act shall be codified in Chapter 77, Title 27, Mississippi Code of 1972."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Board of tax appeals to have jurisdiction over all administrative appeals to the board from decisions of the review board and administrative hearing officers of the department of revenue under this section, see § 27-4-3.

Review of board of tax appeals' orders pursuant to Section 27-77-9, 27-77-11 or 27-77-12 by Chancery Court, see § 27-77-13.

Appeal procedure for denial of application or request for IFTA license, see § 27-77-11.

Review of board of tax appeals' orders pursuant to Section 27-77-9, 27-77-11 or 27-77-12 by Chancery Court, see § 27-77-13.

§ 27-77-13. Board of Tax Appeals' orders pursuant to Section 27-77-9, 27-77-11 or 27-77-12 final unless appealed to chancery court; petition; payment of costs of preparation of record; review by chancery court; appeal to Supreme Court from order of chancery court.

(1) The findings and order of the Board of Tax Appeals entered in accordance with Section 27-77-9, 27-77-11 or Section 27-77-12, shall be final unless the agency or the permittee, IFTA licensee, IRP registrant, tag holder, or title interest holder of the permit, IFTA license, IRP registration, tag or title in regard to which action was taken in the order shall, within thirty (30) days from the date of the order, file a petition in chancery court seeking a review of the order. If a petition under this subsection is filed by the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder, the petition shall be filed against the agency as respondent. If a petition under this subsection is filed by the agency, the petition shall be filed against the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder of the permit, IFTA license, IRP registration, tag or title which is the subject of the order sought to be reviewed as respondent. The respondent to a petition has thirty (30) days from the date of service of the petition to file a cross-appeal. The petition shall contain a concise statement of the facts as contended by the petitioner, identify the order from which the appeal is being taken and the type of relief sought. Where the petition is being filed by a permittee, IFTA licensee, IRP registrant, tag holder or title interest holder, the petition shall also contain a certificate that the petitioner has paid to the executive director the estimated cost of the preparation of the entire record of the Board of Tax Appeals on the matter for which a review is sought.

(2) A petition under subsection (1) of this section shall be filed in the chancery court of the county or judicial district in which the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder of the permit, IFTA license, IRP registration, tag or title which is the subject of the order of the Board of Tax Appeals sought to be reviewed has a place of business or in the First Judicial District of Hinds County, Mississippi; however, a resident permittee, IFTA licensee, IRP registrant, tag holder or title interest holder may file a petition in the chancery court of the county or judicial district in which he is a resident. If both the agency and the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder file a petition under subsection (1) of this section, the appeals shall be consolidated and the chancery court where the first petition was filed shall have jurisdiction over the consolidated appeal. If it cannot be determined which petition was filed first, the chancery court where the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder filed his petition shall have jurisdiction over the consolidated appeal.

(3) The review by the chancery court of the order of the Board of Tax Appeals on a petition filed under subsection (1) of this section shall be based on the record made before the Board of Tax Appeals. Before filing a petition under subsection (1) of this section, a petitioner, who is a permittee, IFTA licensee,

IRP registrant, tag holder or title interest holder, shall obtain from the executive director an estimate of the cost to prepare the entire record of the Board of Tax Appeals and shall pay to the executive director the amount of the estimate. If, upon the preparation of the record, it is determined that the estimate paid was insufficient to pay the actual cost of the preparation of the record, the executive director shall mail to the petitioner a written notice of the deficiency. The petitioner shall pay the deficiency to the executive director within thirty (30) days from the date of this written notice. If upon the preparation of the record, it is determined that the estimate paid by the petitioner exceeds the actual cost of the preparation of the record, the executive director shall remit to the petitioner the amount by which the estimate paid exceeds the actual cost. The chancery court shall dismiss with prejudice any petition filed by a permittee, IFTA licensee, IRP registrant, tag holder or title interest holder where it is shown that the petitioner failed to pay prior to filing the petition the estimated cost for preparation of the record of the Board of Tax Appeals or failed to pay any deficiency in the estimate within thirty (30) days of a notice of deficiency. Where the agency files a petition under subsection (1) of this section, the agency shall pay the cost of the preparation of the entire record of the Board of Tax Appeals on the matter for which a review is sought. Where both the agency and the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder file a petition under subsection (1) of this section from the same Board of Tax Appeals order, the executive director shall remit to the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder that filed the petition the amount by which, if any, the payment received from this permittee, IFTA licensee, IRP registrant, tag holder or title interest holder for preparation of the record exceeds one-half (½) of the actual cost of preparation of the record. The other half of the actual cost of preparation of the record in this situation shall be paid by the agency.

(4) Upon the filing of the petition under subsection (1) of this section, the clerk of the court in which the petition is filed shall issue a summons to the respondent requiring the respondent to answer or otherwise respond to the petition within thirty (30) days of service. Where the agency is the respondent, the summons shall be served on the agency by personal service on the commissioner as the chief executive officer of the agency.

(5) Upon the filing of an answer and/or response to the petition filed under subsection (1) of this section, and upon the filing of the record made before the Board of Tax Appeals with the clerk of the court, the chancery court shall, upon the motion of either party, establish a schedule for the filing of briefs in the action. The scope of review of the chancery court in an action filed under subsection (1) of this section shall be limited to a review of the record made before the Board of Tax Appeals to determine if the action of the Board of Tax Appeals is unlawful for the reason that it was:

(a) Not supported by substantial evidence;

(b) Arbitrary or capricious;

(c) Beyond the power of the Board of Tax Appeals to make; or

(d) In violation of some statutory or constitutional right of the petitioner.

(6) No relief shall be granted based upon the chancery court's finding of harmless error by the Board of Tax Appeals in complying with any procedural requirement; however, in the event that there is a finding of prejudicial error in the proceedings, the cause shall be remanded to the Board of Tax Appeals for a rehearing consistent with the findings of the court.

(7) The respondent, the petitioner, or both, shall have the right to appeal from the order of the chancery court to the Supreme Court as in other cases.

SOURCES: Laws, 2005, ch. 499, § 7; Laws, 2007, ch. 400, § 4; Laws, 2009, ch. 492, § 119; Laws, 2010, ch. 388, § 11, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Board of tax appeals, see § 27-4-1 et seq.

§ 27-77-15. Disclosure of certain information in possession of the Department of Revenue or Board of Tax Appeals prohibited; exceptions; certain records exempt from public records disclosure requirements; certain meetings and deliberations exempt from open meetings law.

(1) Except as otherwise provided in this section, it shall be unlawful for the executive director, the Board of Tax Appeals, the commissioner, the agency, or an officer, agent or employee of the agency or the Board of Tax Appeals, to divulge or make known in any manner the information contained in the files, records and orders of the agency, a hearing officer of the agency, the board of review or the Board of Tax Appeals in regard to an appeal to a hearing officer, the board of review or the Board of Tax Appeals under this chapter.

(2) For purposes of this section, the term "appellant" means the taxpayer, IFTA licensee, IRP registrant, permittee, tag holder or title interest holder who filed the appeal to the board of review or the Board of Tax Appeals under this chapter which resulted in the files, records and orders of that appeal.

(3) The executive director, the Board of Tax Appeals, the commissioner, the agency, hearing officer or an agent or employee of the agency or the Board of Tax Appeals is permitted to divulge and make known information otherwise

prohibited from disclosure under subsection (1) of this section in any of the following circumstances:

(a) Where the information is being disclosed as a result of complying with the provisions of this chapter and/or with regulations promulgated to enforce the provisions of this chapter.

(b) Where the information is being provided to the appellant or his designated representative.

(c) Where the information is being disclosed to employees or officers of the agency.

(d) Where the information is being provided or disclosed pursuant to a written authorization executed by the appellant as prescribed by regulation.

(e) Where the information is being provided or disclosed in the course of a court action in which the agency, the Board of Tax Appeals, the commissioner, an officer or employee of the agency or the Board of Tax Appeals and the appellant are parties, including, but not limited to, an action brought under this chapter or in the course of the bankruptcy case of the appellant.

(f) Where the information is being provided to the Internal Revenue Service or a taxing authority of another state under an information exchange agreement where similar information can be obtained by the agency from the Internal Revenue Service or state taxing authority receiving the information.

(g) Where the information is being provided pursuant to the International Registration Plan (IRP) or the International Fuel Tax Agreement (IFTA) or any regulations, rules or procedures adopted under such plan or agreement.

(h) Where the disclosure of information is authorized under Section 27-19-123, 27-55-49, 27-55-557, 27-57-39, 27-59-53 or 27-61-20.

(i) Where the information is being provided to the State Auditor or his employees in the course of his audit of the agency; however, the prohibitions against disclosure which apply to the agency shall also apply to the State Auditor and his employees or former employees.

(j) Where the information is being provided to the Attorney General or any other attorney representing the state or the agency in an action brought by the appellant to set aside the tax, in an action brought by the state or agency to recover the tax imposed, or in an action where the appellant is being prosecuted for a crime under the tax laws of this state.

(k) Where the information is being provided by the commissioner to a contractor of collection services pursuant to the authority granted the commissioner in Section 27-75-16.

(*l*) Where the information is being provided in accordance with a proper judicial order. The term "proper judicial order" as used in this paragraph shall not include subpoenas or subpoenas duces tecum, but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the appellant and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation in which the information itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the appellant to have such information secreted.

(4) Nothing in subsection (1) of this section shall prohibit the inspection or disclosure of the minutes of the Board of Tax Appeals except to the extent that such minutes reflect the specific amount of a tax assessment or refund claim or the specific amount of tax or refund claim determined by the Board of Tax Appeals to be due.

(5) Information that is prohibited from being disclosed in subsection (1) of this section shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(6) Due to the need to discuss confidential tax information, the hearings before a hearing officer, the board of review and the Board of Tax Appeals under this chapter, and the meetings in which the board of review and the Board of Tax Appeals deliberate and vote on the issues raised at such hearings shall be exempt from the provisions of Section 25-41-1 et seq.

SOURCES: Laws, 2005, ch. 499, § 8; Laws, 2007, ch. 400, § 5; Laws, 2009, ch. 492, § 120; Laws, 2010, ch. 388, § 12, eff from and after July 1, 2010.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

Board of tax appeals, see § 27-4-1 et seq.

§ 27-77-17. Functions of commission that relate to ad valorem taxation, local option alcoholic beverage law, and native wine law exempt from provisions of this chapter.

Except as to the determination of whether a tag penalty should be waived under Section 27-51-43, the provisions of this chapter shall not apply to any action taken by the agency, commissioner or the Department of Revenue in regard to ad valorem taxes, including, but not limited to, the determination under Section 27-31-107 as to whether property is entitled to a new or expanded enterprise exemption, the duties and actions performed under the Homestead Exemption Law of 1946, being Section 27-33-1 et seq., the actions taken as the result of the examination of the recapitulation of the assessment rolls of the counties under Section 27-35-113, the actions relating to the examination of the assessment rolls under Section 27-35-127, and the ad valorem assessment of railroads, public service corporations, nuclear generating plants, railcar companies, airline companies, motor vehicles, manufactured homes and mobile homes. The provisions of this chapter shall not apply to any action of the agency, commissioner or Department of Revenue under the Local Option Alcoholic Beverage Control Law, being Section 67-1-1 et seq. or any action under the Mississippi Native Wine Law of 1976, being Section 67-5-1 et seq.

SOURCES: Laws, 2005, ch. 499, § 9; Laws, 2009, ch. 492, § 121, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

§ 27-77-19. Rules and regulations; subpoena power.

(1) The commissioner may from time to time make such rules and regulations, not inconsistent with this chapter, as he may deem necessary to enforce its provisions as it relates to matters, proceedings and/or appeals before the agency, a hearing officer of the agency and the board of review.

(2) The Board of Tax Appeals may from time to time make such rules and regulations, not inconsistent with this chapter, as it may deem necessary to enforce its provisions as it relates to matters, proceedings and/or appeals before the Board of Tax Appeals.

(3) By issuance of a subpoena under his signature and seal, the commissioner may require any person to attend a hearing before a hearing officer or the board of review and to give testimony and/or produce documents or other things at that hearing. If any person subpoenaed by the commissioner fails to attend the hearing, refuses to testify or answer any material question at the hearing or refuses to produce at the hearing any document or thing subpoenaed, the commissioner or the person who requested issuance of the subpoena is authorized to institute proceedings in the circuit court of the county where such person resides or is found to compel compliance with the subpoena.

(4) By issuance of a subpoena under his signature and seal, the executive director may require any person to attend a hearing before the Board of Tax Appeals and to give testimony and/or produce documents or other things at that hearing. If any person subpoenaed by the executive director fails to attend the hearing, refuses to testify or answer any material question at the hearing or refuses to produce at the hearing any document or thing subpoenaed, the executive director or the person who requested issuance of the subpoena is authorized to institute proceedings in the circuit court of the county where such person resides or is found to compel compliance with the subpoena.

SOURCES: Laws, 2005, ch. 499, § 10; Laws, 2009, ch. 492, § 122, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Board of tax appeals, see § 27-4-1 et seq.

CHAPTER 101

Annual Reports by Departments of Government, State-Supported Institutions and Taxing Entities

Annual Reports — Departments of Government and State-Supported Institutions 27-101-1
Annual Reports — Taxing Entities 27-101-21

ANNUAL REPORTS — DEPARTMENTS OF GOVERNMENT AND STATE-SUPPORTED INSTITUTIONS

Sec.
27-101-1. Time for closing certain annual reports; executive summaries of report.
27-101-3. Publication and transmission of reports and executive summaries.
27-101-5. Publication of additional copies.
27-101-7. Repealed.

§ 27-101-1. Time for closing certain annual reports; executive summaries of report.

(1) Each and every educational, eleemosynary and other institution of the State of Mississippi supported, in whole or in part, by the state, and each and every board, agency, commission and department of government, except the Departments of Insurance and of Education, shall prepare, on or before December 31 of each year, a detailed report covering the annual period ending the preceding June 30. The Insurance Department shall prepare, on or before December 31 of each year, a like report covering the annual period ending the preceding March 1. The Department of Education shall prepare, on or before December 31 of each year, a like report covering the preceding school year.

(2) Each agency, board, commission, department and institution required by this section to prepare an annual report also shall prepare an executive summary of the report that is not more than three (3) pages long.

SOURCES: Codes, Hemingway's 1917, § 3641; 1930, § 3875; 1942, § 9099; Laws, 1916, ch. 234; Laws, 1966, ch. 547, § 4; Laws, 1970, ch. 529, § 1; Laws, 1997, ch. 443, § 1; Laws, 2011, ch. 442, § 2; Laws, 2012, ch. 429, § 1, eff from and after July 1, 2012.

ATTORNEY GENERAL OPINIONS

Sections 27-101-1 and 27-101-3 require institutions of the state of Mississippi and state agencies to transmit annual reports to the legislature. These sections do not preclude state agencies from requirements to provide to the Library Commission their publications issued for public distribution under Section 25-51-1 et seq. Pellington, October 18, 1995, A.G. Op. #95-0686.

§ 27-101-3. Publication and transmission of reports and executive summaries.

Each annual report required by Section 27-101-1 shall be published electronically on the official website of the respective institution, board, agency, commission or department, and shall be published on the Transparency Mississippi website maintained by the Department of Finance and Administration. One (1) copy of each annual report and the executive summary of the report shall be electronically transmitted to the Executive Director of the Department of Finance and Administration, the State Librarian, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and each state elected and appointed official. Each person to whom an annual report is electronically transmitted may receive the information necessary to obtain the applicable annual report in electronic form, including instructions on how to print the report, upon request to the agency, board, commission, department or institution that prepared the report.

SOURCES: Codes, 1942, § 9099.3; Laws, 1966, ch. 547, § 5; Laws, 1970, ch. 530, § 1; Laws, 1989, ch. 321, § 6; Laws, 1997, ch. 443, § 2; Laws, 2009, ch. 343, § 1; Laws, 2012, ch. 429, § 2; Laws, 2017, ch. 363, § 2, eff from and after passage (approved Mar. 20, 2017.)

Amendment Notes — The 2017 amendment, effective March 20, 2017, added "and shall be published…Administration" at the end of the first sentence; and inserted "Executive Director of the Department of Finance and Administration, the" in the second sentence.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Nature of department reports, see § 31-1-19.

ATTORNEY GENERAL OPINIONS

Sections 27-101-1 and 27-101-3 require institutions of the state of Mississippi and state agencies to transmit annual reports to the legislature. These sections do not preclude state agencies from requirements to provide to the Library Commission their publications issued for public distribution under Section 25-51-1 et seq. Pellington, October 18, 1995, A.G. Op. #95-0686.

§ 27-101-5. Publication of additional copies.

The Department of Finance and Administration may authorize the non-electronic publication of a limited number of copies of the annual or other reports in meritorious cases.

SOURCES: Codes, 1942, § 9099.5; Laws, 1966, ch. 547, § 6; Laws, 1968, ch. 506, § 24; Laws, 1970, ch. 531, § 1; Laws, 1984, ch. 488, § 179; Laws, 1997, ch. 443, § 3; Laws, 2012, ch. 429, § 3, eff from and after July 1, 2012.

§ 27-101-7. Repealed.

Repealed by Laws, 1997, ch. 443, § 4, eff from and after July 1, 1997. [Codes, 1942, § 9099.7; Laws, 1966, ch. 547, § 7; Laws, 1985, ch. 455, § 8]

Editor's Note — Former § 27-101-7 provided for the exclusion of State Treasurer and Auditor reports from the provisions of this chapter.

ANNUAL REPORTS — TAXING ENTITIES

Sec.
27-101-21. Annual reports by taxing entities; definitions; content of report.

§ 27-101-21. Annual reports by taxing entities; definitions; content of report.

(1) As used in this section, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Taxing entity" includes, but is not limited to, counties, municipalities, school districts, fire protection districts, road districts, water districts, sewer districts, utility districts, regional solid waste management authorities, utility authorities, drainage districts, community hospitals, community college districts and junior college districts, housing authorities, county industrial development authorities, port commissions, and any other such regional or local agencies, authorities or entities created under law.

(b) "Tax revenue" includes, but is not limited to, revenue from ad valorem taxes, local sales taxes, gaming fees and taxes, payments in lieu of taxes, state sales tax diversions, fuel tax diversions and other tax sources.

(2)(a) In addition to any other requirements provided by law, a taxing entity shall file an annual report with the Department of Revenue providing the amount of tax revenues received by the taxing entity during the prior fiscal year. The report shall provide at least the following information:

(i) The total tax revenues derived from taxes levied by the taxing entity and/or for the taxing entity;

(ii) The total tax revenues distributed to the taxing entity from state sales tax diversions, fuel tax diversions, ad valorem taxes, local sales taxes, payments in lieu of taxes, gaming fees and taxes and other tax sources; and

(iii) The sources from which the taxing entity received the tax revenues and the amounts received from each source.

(b) The report required under this subsection shall be filed by the taxing entity not later than ninety (90) days after the close of the fiscal year for which the report is prepared.

(3) The reports filed under this section shall be posted on the Department of Revenue's website.

SOURCES: Laws, 2016, ch. 439, § 1; Laws, 2017, ch. 332, § 1, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment substituted “Department of Revenue” for “State Auditor” in (2)(a) and “Department of Revenue’s” for “State Auditor’s” in (3).

CHAPTER 103

State Budget

In General. [Repealed]
General Fund Stabilization Act. [Repealed]
Joint Legislative Budget Committee; Legislative Budget Office 27-103-101
Mississippi Performance Budget and Strategic Planning Act of 1994 ... 27-103-151
Budget Reform Act of 1992 27-103-201
Budget Contingency and Capital Expense Funds 27-103-301

IN GENERAL
[REPEALED]

Sec.
27-103-1 through 27-103-73. Repealed.
27-103-75. Repealed.

§§ 27-103-1 through 27-103-73. Repealed.

Repealed by Laws, 1984, ch. 488, § 334, eff from and after July 1, 1984.

§ 27-103-1. [Codes, 1942, § 9104-01; Laws, 1962, ch. 496, §§ 1-3; Laws, 1968, ch. 513, §§ 1-3; Am Laws, 1980, ch. 560, § 9]

§ 27-103-3. [Codes, 1942, § 9104-02; Laws, 1962, ch. 496, §§ 4-7 (¶¶ 1-4); Am Laws, 1983, ch. 422, § 9]

§ 27-103-5. [Codes, 1942, § 9104-03; Laws, 1962, ch. 496, § 8]

§ 27-103-7. [Codes, 1942, § 9104-04; Laws, 1962, ch. 496, § 9; Laws, 1970, ch. 532, § 1]

§ 27-103-9. [Codes, 1942, § 9104-05; Laws, 1962, ch. 496, § 10]

§ 27-103-11. [Codes, 1942, § 9104-06; Laws, 1962, ch. 496, § 11]

§ 27-103-13. [Codes, 1942, § 9104-07; Laws, 1962, ch. 496, § 12; Laws, 1970, ch. 532, § 2]

§ 27-103-15. [Codes, 1942, § 9104-08; Laws, 1962, ch. 496, § 13; Laws, 1970, ch. 533, § 1]

§ 27-103-17. [Codes, 1942, § 9104-09; Laws, 1962, ch. 496, § 14]

§§ 27-103-19 through 27-103-21. [Codes, 1942, §§ 9104-10 and 9104-11; Laws, 1962, ch. 496, §§ 15 and 16; Laws, 1970, ch. 534, § 1]

§§ 27-103-23 through 27-103-31. [Codes, 1942 §§ 9104-12 to 9104-16; Laws, 1962, ch. 496, §§ 17-21; Laws, 1970, ch. 532, §§ 3-5; Laws, 1970, ch. 535, § 1; Laws, 1970, ch. 536, § 1]

§§ 27-103-33 through 27-103-35. [Codes, 1942, §§ 9104-17 and 9104-18; Laws, 1962, ch. 496, §§ 22 and 23]

§ 27-103-37. [Codes, 1942, § 9104-19; Laws, 1962, ch. 496, § 24]

§ 27-103-39. [Codes, 1942, § 9104-20; Laws, 1962, ch. 496, § 25; 1970, ch. 537, § 1]

§ 27-103-41. [Codes, 1942, § 9104-21; Laws, 1962, ch. 496, § 26; Laws, 1970, ch. 532, § 6]

§ 27-103-43. [Codes, 1942, § 9104-22; Laws, 1962, ch. 496, § 27]

§§ 27-103-45 through 27-103-53. [Codes, 1942, §§ 9104-23 to 9104-27; Laws, 1962, ch. 496, §§ 28-32; Laws, 1970, ch. 532, §§ 7-11]

§ 27-103-55. [Codes, 1942, § 9104-28; Laws, 1962, ch. 496, § 33; 1970, ch. 532, § 12]

§ 27-103-57. [Codes, 1942, § 9104-29; Laws, 1962, ch. 496, § 34; Laws, 1970, ch. 532, § 13, ch. 538, § 1]

§ 27-103-59. [Codes, 1942, § 9104-31; Laws, 1962, ch. 496, § 36; Laws, 1970, ch. 532, § 15]

§ 27-103-61. [Codes, 1942, § 9104-32; Laws, 1962, ch. 496, § 37; Laws, 1970, ch. 532, § 16, ch. 476, § 1]

§§ 27-103-63 through 27-103-67. [Codes, 1942, §§ 9104-33 to 9104-35; Laws, 1962, ch. 496, §§ 38-40; Laws, 1970, ch. 532, § 17]

§ 27-103-69. [Codes, 1942, § 9104-36; Laws, 1962, ch. 496, § 41]

§ 27-103-71. [Codes, 1942, § 9104-37; Laws, 1962, ch. 496, § 42]

§ 27-103-73. [Codes, 1942, § 9104-41; Laws, 1966, ch. 551, §§ 1, 2]

Editor's Note — Former § 27-103-1 created the commission of budget and accounting.

Former § 27-103-3 contained definitions applicable to §§ 27-103-1 through 27-103-75.

Former § 27-103-5 provided for an exemption of endowment funds as being classified as special funds.

Former § 27-103-7 required reports of all funds received, and reports of all general-fund agencies.

Former § 27-103-9 related to special-fund agency reports.

Former § 27-103-11 provided that the business of the commission of budget and accounting would be administered by a director appointed by the commission.

Former § 27-103-13 provided for the preparation of the budget by the commission.

Former § 27-103-15 provided that nominees for governor and lieutenant governor could sit as nonvoting members of the commission of budget and accounting.

Former § 27-103-17 required the commission of budget and accounting to make continuous studies of stage agencies, and make recommendations pertaining thereto.

Former §§ 27-103-19 and 27-103-21 outlined the duties of the director in connection with state agencies and legislative committees.

Former §§ 27-103-23 through 27-103-31 contained provisions concerning the parts and summary of the budget.

Former §§ 27-103-33 and 27-103-35 concerned budget requests.

Former § 27-103-37 provided authority for visitation of state agencies by members of the commission of budget and accounting.

Former § 27-103-39 required information to be submitted to the commission of budget and accounting as to revenue collected.

Former § 27-103-41 was entitled: Copies of budget.

Former § 27-103-43 required the governor to submit his recommendations regarding the budget to the legislature and executive agencies.

Former §§ 27-103-45 through 27-103-53 related to budgetary controls.

Former § 27-103-55 required the state auditor to keep records.

Former § 27-103-57 required the keeping of records for purchases, obligations and expenses.

Former § 27-103-59 placed responsibility on the executive head and business manager of each state agency for all obligations or indebtedness incurred in the name of the agency.

Former § 27-103-61 required bonds for the executive head and business manager of each state agency.

Former §§ 27-103-63 through 27-103-67 related to the chief of the division of accounting within the commission of budget and accounting.

Former § 27-103-69 required state agencies to make periodic or special reports.

Former § 27-103-71 required state agencies that were subject to Chapter 103 to promulgate or enforce rules and regulations.

Former § 27-103-73 authorized the commission of budget and accounting to request that the attorney general bring an injunctive action against a special funding agency.

§ 27-103-75. Repealed.

Repealed by Laws of 1981, ch. 501, § 27, effective from and after July 1, 1981.

[Codes, 1942, § 9104-51; Laws, 1966, ch. 553, §§ 1-5]

Editor's Note — Former § 27-103-75 permitted off premises storage and microfilming of records.

GENERAL FUND STABILIZATION ACT
[REPEALED]

SEC.
27-103-77 through 27-103-79. Repealed.
27-103-81. Repealed
27-103-83. Repealed.
27-103-85. Repealed.
27-103-87. Repealed.

§§ 27-103-77 through 27-103-79. Repealed.

Repealed by Laws, 1992, ch. 484 § 18, eff from and after passage (approved May 7, 1992).

§ 27-103-77. [Laws, 1982, ch. 428, § 1, eff from and after passage (approved April 1, 1982)].

§ 27-103-79. [Laws, 1982, ch. 428, § 2, eff from and after passage (approved April 1, 1982)].

Editor's Note — Former § 27-103-77 contained the short title, "General Fund Stabilization Act", applicable to §§ 27-103-77 through 27-103-87.

Former § 27-103-79 contained the legislative purpose for the "General Fund Stabilization Act" comprised of §§ 27-103-77 through 27-103-87.

§ 27-103-81. Repealed.

Repealed by Laws, 2004, ch. 596 § 1, effective from and after passage (approved May 27, 2004).

[Laws, 1982, ch. 428, § 3; Laws, 1984, ch. 488, § 89; Laws, 1992, ch. 484 § 8, eff from and after passage (approved May 7, 1992).]

Editor's Note — Former § 27-103-81 was entitled: "Warrants to be reimbursed by federal government may be paid out of Working Cash-Stabilization Reserve Fund."

§ 27-103-83. Repealed.

Repealed by Laws of 1984, ch. 488, § 338, effective from and after July 1, 1984.

[Laws, 1982, ch. 428, § 4]

Editor's Note — Section 27-103-83 provided for transfer of funds in event of emergency or disaster by the commission of budget and accounting.

§ 27-103-85. Repealed.

Repealed by Laws of 1992, ch. 484 § 18, effective from and after passage (approved May 7, 1992).

[Laws, 1982, ch. 428, § 5; Laws, 1989, ch. 540, § 1; Laws, 1989, ch. 544, § 165, eff from and after July 1, 1989].

Editor's Note — Former § 27-103-85 governed the investment of funds deposited in the General Fund stabilization reserve and the General Fund reserve.

§ 27-103-87. Repealed.

Repealed by Laws of 1984, 1st Ex Sess, ch. 10, § 9, effective from and after July 1, 1984.

§ 27-103-87. [Laws, 1982, ch. 428, § 6]

Editor's Note — Former § 27-103-87 provided for distribution of funds appropriated to cash balance fund.

JOINT LEGISLATIVE BUDGET COMMITTEE; LEGISLATIVE BUDGET OFFICE

SEC.

27-103-101. Joint Legislative Budget Committee; Legislative Budget Office; membership; compensation; meetings.
27-103-103. Definitions.
27-103-105. Endowment funds, certain research funds and private gifts not exempt from budget procedures.
27-103-107. Reports.
27-103-109. Special fund agency reports.
27-103-111. Director; authority; compensation; clerical and technical assistants.
27-103-113. Budget preparation.
27-103-114. Proposed budget to include multiyear plan for all agencies included in budget, all funding sources, and identified program categories.
27-103-115. Recommendations and studies as to state agencies.
27-103-117. Duties of director of Legislative Budget Office.
27-103-119. Consultation with legislative committees by director.
27-103-121. Budget; parts and summary.
27-103-123. Part 1 of budget; contents.
27-103-125. Separation of items; limitation on expenditures; recommendations as to additional taxes or sources of revenue.
27-103-127. Parts 2 and 3 of budget; special fund agency; institutions of higher learning budget; port or harbor agency budgets; department of transportation; division of state aid road construction.

27-103-129.	Budget requests; contents of request; detailed justification for vehicle purchase required; emergency requests for vehicle purchases; agency reports of vehicles in possession; exemptions; publication of budget requests on Legislative Budget Office and state agency websites.
27-103-131.	Failure or refusal to file budget request; proceedings.
27-103-133.	Visitation of state agencies; hearings.
27-103-135.	Information to be furnished by tax, fee-collecting or other revenue-producing agency; reports.
27-103-137.	Hearings on budget requirements; copies of budget.
27-103-139.	Submission of budget; employment of budget officer.

§ 27-103-101. Joint Legislative Budget Committee; Legislative Budget Office; membership; compensation; meetings.

(1) There is created the Joint Legislative Budget Committee and the Legislative Budget Office which shall be governed by such committee. The joint committee shall be composed of the following members: The Chairman of the Senate Finance Committee, the President Pro Tempore of the Mississippi State Senate, the Lieutenant Governor of the State of Mississippi, the Chairman of the Senate Appropriations Committee and three (3) members of the Senate to be named by the Lieutenant Governor; the Chairman of the Ways and Means Committee of the House of Representatives, the Chairman of the Appropriations Committee of the House of Representatives, the Speaker of the House of Representatives and four (4) members of the House of Representatives to be named by the Speaker of the House. In the event any ex officio member of the joint committee holds two (2) positions entitling him to membership on the committee, the Lieutenant Governor or the Speaker of the House, as the case may be, shall appoint another member of the respective house to membership on the committee. The chairmanship shall alternate for twelve-month periods between the Speaker of the House of Representatives and the Lieutenant Governor, with the Speaker of the House of Representatives serving as the first chairman. In the absence of the Chairman of the Senate Finance Committee, Senate Appropriations Committee, House Appropriations Committee and Ways and Means Committee, the vice chairman of any such committee shall be entitled to attend; if the vice chairman is unable to attend or if an appointed member is unable to attend, another legislator may be designated to attend by the Lieutenant Governor or the Speaker of the House, as the case may be. If the Lieutenant Governor or Speaker of the House is unable to attend a meeting, he may designate a legislator to substitute for him at that meeting. If the President Pro Tempore of the State Senate is unable to attend a meeting, the Lieutenant Governor shall designate a member of the Senate to substitute for him at that meeting. Any proxy shall have a vote at the meeting he was selected to attend and also shall, when attending, receive compensation and expenses in the same manner and amount as regular members of the joint committee.

There shall be no business transacted, including adoption of rules of procedure, without the presence of a quorum of the joint committee. A quorum shall be eight (8) members, to consist of four (4) members from the Senate and four (4) members from the House of Representatives. No action shall be valid unless approved by the majority of those members present and voting, entered upon the minutes of the joint committee and signed by the chairman and vice chairman. All actions of the joint committee shall be approved by at least four (4) Senate members and four (4) House members.

As used in Sections 27-103-101 through 27-103-139, the term "committee" shall mean the Joint Legislative Budget Committee.

(2) The members of the committee shall receive, in addition to other compensation due them, per diem as is authorized by law for their services in carrying out the duties of the committee and, in addition thereto, shall receive a daily expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations, including mileage as authorized by Section 25-3-41, the same to be paid from the operating budget of the Legislative Budget Office. However, in no case shall the members of the committee draw per diem while the Legislature is in regular or special session, except that members may receive the per diem and expenses authorized by this section when the Legislature is in session but in recess under the terms of a concurrent resolution, or in recess during a special session.

(3) The committee may meet at least once each month; and the chairman or director may call additional meetings at such times as they deem necessary or advisable.

(4) The Legislative Budget Office shall, upon the request of a member or member-elect of the Senate or House of Representatives, make available one (1) copy of data, reports, fiscal information or related information submitted to the budget office by any general or special fund agency, whether submitted in support of its budget request or pursuant to any requirement of law or rule of the budget committee or office.

(5) All expenses incurred by and on behalf of the committee shall be paid from funds appropriated therefor, or from a sum to be provided in equal portion from the contingency funds of the Senate and House of Representatives or from transfers of funds as provided in Section 7-13-7.

SOURCES: Laws, 1984, ch. 488, § 55; Laws, 1985, ch. 525, § 1; Laws, 1986, ch. 369; Laws, 1988, ch. 314, § 2; Laws, 1999, ch. 568, § 1; Laws, 2009, ch. 483, § 5, eff from and after passage (approved Apr. 3, 2009.)

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Definitions, generally, see § 27-103-103.

Duty of agency coming within purview of Sections 27-103-101 through 27-103-139 to submit list of all outstanding encumbrances, see § 27-104-23.

Inapplicability of Sections 27-103-101 through 27-103-139 to agencies supported wholly by federal funds, see § 27-104-27.

Injunctive action by Attorney General to enforce compliance with §§ 27-103-101 through 27-103-139, see § 27-104-29.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 27-103-1.

1. In general.

The participation of the Lieutenant Governor on the Joint Legislative Budget Committee was not a violation of the constitutional provision for separation of executive and legislative powers. The Lieutenant Governor is constitutionally an officer of both the executive and legislative departments and is eligible as President of the Senate to receive the legislative powers conferred upon him by the legislation creating the Joint Legislative Budget Committee. Neither the statute creating the Joint Legislative Budget Committee nor the Lieutenant Governor's service on the committee constituted a violation of the constitutionally mandated separation of powers. Kirksey v. Dye, 564 So. 2d 1333 (Miss. 1990).

2.-5. [Reserved for future use.]

6. Under former § 27-103-1.

Where members of the Commission of Budget and Accounting, whose activities include the budget-making process, the budget-control process, regulating purchases made by state agencies, administering state employees' life and health insurance plans, and miscellaneous duties, held office in the legislative department of government, and were voting members of each, the Commission as constituted violated Miss Const Art 1 § 2, and former § 27-103-1(1), insofar as it was composed simultaneously of members of both the legislative and executive departments as voting members. Alexander v. State ex rel. Allain, 441 So. 2d 1329 (Miss. 1983).

§ 27-103-103. Definitions.

(1) For the purpose of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-27, the term "state general-fund agency" or "general-fund agency" shall mean any agency, department, institution, board or commission of the State of Mississippi which is supported in whole or in part by appropriations from the General Fund; but such term shall not include the Legislature.

(2) For the purposes of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-27, the term "state special-fund agency" or "special-fund agency" shall mean any agency, department, institution, board or commission of the State of Mississippi which receives no appropriation from the General Fund, but which is supported entirely from special fund sources, by appropriation, or otherwise, but such term shall not include the State Highway Department; nor shall such term include the Mississippi Industries for the Blind.

(3) For the purposes of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-27, the term "state agency" shall mean any general fund agency or special fund agency as defined in this section, or the State Highway Department, or the Division of State Aid Road Construction of the State Highway Department as is evident from the context wherein it is used.

(4) For the purposes of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-27, the term "special funds" shall mean all revenues and/or income other than appropriations from the State General Fund which are received, collected by, or available for the support of or expenditure by any state general-fund agency or special-fund agency or the State Highway

Department or the Division of State Aid Road Construction of the State Highway Department, whether such funds be derived from taxes or fees collected by or for such general-fund agency or special-fund agency or the State Highway Department or the Division of State Aid Road Construction of the State Highway Department, as the case may be, or from any other types of revenue from any other source.

(5) For the purposes of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-27, the term "special funds" shall include revolving funds and all funds received from the United States Government by any state general-fund agency or special-fund agency, but shall not include any revolving fund established prior to July 1, 1984, for the purpose of paying or retiring any indebtedness as is authorized by statute.

SOURCES: Laws, 1984, ch. 488, § 56; Laws, 1985, ch. 320; Laws, 1985, ch. 525, § 2, eff from and after July 1, 1985.

Editor's Note — Laws of 1992, ch. 419, § 30, effective from and after July 1, 1992, provides as follows:

"SECTION 30. Beginning July 1, 1992, each state agency, as defined in Section 27-103-103, Mississippi Code of 1972, shall begin the process of identifying for deletion ten percent (10%) of the agency employment positions as authorized in the agency's appropriation for Fiscal Year 1993. Agencies shall rely upon normal attrition, retirement and good management practices to accomplish the reductions. Each agency shall make the specified ten percent (10%) reduction in increments of approximately two percent (2%) each fiscal year, and the full ten percent (10%) reduction shall be reflected in the personnel documents of the State Personnel Board by July 1, 1997. All deletions of agency employment positions as provided in this section shall be made in accordance with the rules and regulations of the State Personnel Board regarding reductions in staff.

"The State Personnel Board shall provide assistance to state agencies in identifying positions for deletion. During the period of these mandated reductions, the State Personnel Board shall annually submit a full, detailed report to the Joint Legislative Budget Committee by August 1 describing the position deletions and associated dollar savings. An agency may seek exceptions from the mandated reductions; however, any exceptions must be approved by the Governor and an explanation and notice of such exceptions provided in writing to the Joint Legislative Budget Committee and to the House and Senate Appropriations Committees."

Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation.

Cross References — Construction of the term "committee", see § 27-103-101.

State fiscal affairs generally, see §§ 27-104-1 through 27-104-27.

Responsibility for obligations or indebtedness incurred in name of agency, see § 27-104-25.

ATTORNEY GENERAL OPINIONS

Community and junior colleges are not "state agencies" as defined in Section 27-103-103 and therefore are not subject to Section 30 of Senate Bill 3120, mandating ten percent reduction in work force. Ray, Oct. 28, 1992, A.G. Op. #92-0824.

§ 27-103-105. Endowment funds, certain research funds and private gifts not exempt from budget procedures.

Endowment funds from whatever source received, research funds from other than state appropriations, and private gifts to designated agencies or for designated purposes, may not be considered as special funds for the purposes of this chapter and may not be exempt from its terms and provisions.

SOURCES: Laws, 1984, ch. 488, § 57; Laws, 1989, ch. 532, § 49, eff from and after July 1, 1989.

§ 27-103-107. Reports.

All receipts, disbursements, assets, liabilities, encumbrances and fund balances shall be reported to the legislative budget office in regular reports and at such additional periods as the legislative budget office may require. All general fund agencies shall file such reports monthly with the legislative budget office on or before the fifteenth day of the succeeding month. The reports must contain such information and in such form as shall be required by the legislative budget office.

SOURCES: Laws, 1984, ch. 488, § 58, eff from and after July 1, 1984.

Cross References — Reports by special fund agencies, see § 27-103-109.

Authority to request reports concerning revenue collected or otherwise received by a tax or fee-collecting or other revenue-producing agency, see § 27-103-135.

§ 27-103-109. Special fund agency reports.

Special-fund agencies may be required to file monthly financial statements or reports in accordance with generally accepted accounting principles, and such agencies may be required to file quarterly or annual reports. The determination of the type of reports and the periods to be covered by such reports shall be determined by the legislative budget office.

SOURCES: Laws, 1984, ch. 488, § 59, eff from and after July 1, 1984.

§ 27-103-111. Director; authority; compensation; clerical and technical assistants.

The business of the committee and the legislative budget office shall be administered by a director, who shall be appointed by the committee and who shall serve at the will and pleasure of the committee. He shall receive such compensation as may be provided by the committee and shall perform such duties as may be prescribed by this or any other statute. Subject to the approval of the committee, he shall have the authority to appoint and employ such stenographic, secretarial, clerical and technical assistants as may be necessary to perform the duties required of the committee and to fix the salaries thereof. All salaries established herein shall be subject to the approval of the committee.

SOURCES: Laws, 1984, ch. 488, § 60, eff from and after July 1, 1984.

Cross References — Visitation of state agencies by the director, see § 27-103-133.

§ 27-103-113. Budget preparation.

It shall be the duty of the Legislative Budget Office to prepare an overall balanced budget of the entire expenses and income of the state for each fiscal year, which budget shall encompass the operations of all general-fund agencies and all special-fund agencies and the Mississippi Department of Transportation and the Division of State Aid Road Construction of the Mississippi Department of Transportation. Beginning with the 1996 fiscal year, such budget shall be prepared in a format which will include performance measurement data associated with the various programs operated by each agency. Said overall budget shall be completed prior to December 15 before the convening of the Legislature at the regular session.

SOURCES: Laws, 1984, ch. 488, § 61; Laws, 1986, ch. 500, § 9; Laws, 1994, ch. 602, § 3; Laws, 2001, ch. 336, § 1, eff from and after passage (approved Mar. 5, 2001.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence. The word "of" was inserted following "Department." The Joint Committee ratified the correction at its December 3, 1996, meeting.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Constitutional and Statutory Balanced Budget Provisions. 82 A.L.R.6th 497.

ATTORNEY GENERAL OPINIONS

Any budget based on a revenue estimate other than that jointly adopted by the Governor and the Joint Legislative Budget Committee as required by the statute would be invalid. Anderson, Nov. 25, 2002, A.G. Op. #02-0674.

§ 27-103-114. Proposed budget to include multiyear plan for all agencies included in budget, all funding sources, and identified program categories.

The Legislative Budget Office shall prepare and include in the proposed budget a multiyear plan for all agencies included in the proposed budget, for all sources of funding, and for such program categories as the Legislative Budget Office identifies. Such plan shall be based on the actual experience of the immediately preceding three (3) fiscal years, on the approved current fiscal year budget, and on estimates for at least the four (4) succeeding fiscal years.

SOURCES: Laws, 2017, 1st Ex Sess, ch. 6, § 6, effective July 1, 2017

Editor's Note — Laws of 2017, 1st Ex Sess, ch. 6, § 1, provides:
"SECTION 6. This act shall be known and may be cited as the 'Financial and Operational Responses That Invigorate Future Years Act (FORTIFY Act).'"

§ 27-103-115. Recommendations and studies as to state agencies.

It shall be the further duty of the Legislative Budget Office to make continuous and careful study of all state agencies, and it may make recommendations to the State Legislature for abolition or consolidation or creation of state agencies.

SOURCES: Laws, 1984, ch. 488, § 62, eff from and after July 1, 1984.

§ 27-103-117. Duties of director of Legislative Budget Office.

It shall be the duty of the director of the Legislative Budget Office to familiarize himself with the operations, needs, requirements and anticipated expenses and income of all state agencies and, for such purpose, he shall have the authority to require any state agency to furnish him with any and all necessary information.

SOURCES: Laws, 1984, ch. 488, § 63, eff from and after July 1, 1984.

§ 27-103-119. Consultation with legislative committees by director.

It shall be further required of the director of the Legislative Budget Office, when the legislature is in session, to consult with the finance and appropriations committees of the senate and the ways and means and appropriations committees of the house of representatives as those committees may require.

SOURCES: Laws, 1984, ch. 488, § 64, eff from and after July 1, 1984.

§ 27-103-121. Budget; parts and summary.

The overall budget so prepared shall be in three (3) parts as specified in Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-27 and shall contain a general summary of the three (3) parts.

SOURCES: Laws, 1984, ch. 488, § 65, eff from and after July 1, 1984.

Cross References — Part 1 of the budget, see § 27-103-123.
Parts 2 and 3 of the budget, see § 27-103-127.

§ 27-103-123. Part 1 of budget; contents.

Part 1 of the overall budget shall include therein the requested budget and the recommended budget for each general fund agency and the proposed revenue by means of which the recommended appropriations can be met.

The overall budget shall show, for each general fund agency, in addition to such other information as may be prescribed by the Legislative Budget Office, the following:

(a) The amount appropriated from the General Fund for the current fiscal year, all special funds receipts already collected and available in the current fiscal year, and an estimate of all special funds which will be collected, or otherwise will become available, by the end of the then current fiscal year;

(b) The estimated amount of all expenditures to be made or obligations to be incurred payable from general or special funds during the then current fiscal year;

(c) The estimated aggregate amount of funds which will be needed by the agency for the succeeding fiscal year; beginning with the 1995 fiscal year and in the event that any services proposed to be provided by the agency in the succeeding fiscal year are Medicaid reimbursable, any state general matching funds necessary for such reimbursements shall be included in the agency's proposed budget, and the appropriation to the Division of Medicaid in the 1995 fiscal year shall be adjusted accordingly;

(d) The estimated aggregate amount of special funds, if any, which will be available during the succeeding fiscal year, including any balances which will be on hand at the close of the then current fiscal year;

(e) The estimated amount which will be needed and which will require change in existing law or laws;

(f) If any new item of expense is included in the proposed budget of any general fund agency, the reason therefor shall be given; and in any case where the Legislative Budget Office shall eliminate or reduce any item or items in the budget request of any general fund agency, it shall note briefly the reasons therefor, together with the reasons advanced by the agency in support of the item or items eliminated or reduced.

SOURCES: Laws, 1984, ch. 488, § 66; Laws, 1994, ch. 649, § 9, eff from and after July 1, 1994.

Cross References — Parts 2 and 3 of the budget, see § 27-103-127.

§ 27-103-125. Separation of items; limitation on expenditures; recommendations as to additional taxes or sources of revenue.

The proposed budget of each state agency shall show the amounts required for operating expenses separately from the amounts required for permanent improvements. The overall budget shall show, separately by each source, the estimated amount of general fund revenue and of special fund revenues of general fund agencies. The total proposed expenditures in Part 1 of the overall budget shall not exceed the amount of estimated revenues that will be available in the general and special funds for appropriation or use during the succeeding fiscal year, including any balances other than unencumbered balances in general funds that will be on hand in the general and special funds at the close of the then current fiscal year. The total proposed expenditures from the State General Fund in Part 1 of the overall budget shall not exceed ninety-eight percent (98%) of the amount of general fund revenue estimate for the succeeding fiscal year. However, for fiscal years 2010, 2011, 2012, 2016 and 2017 only, the total proposed expenditures from the State General Fund in Part 1 of the overall budget shall not exceed one hundred percent (100%) of the amount of the general fund revenue estimate for the succeeding fiscal year, and for fiscal year 2018, the total proposed expenditures from the State General Fund in Part 1 of the overall budget shall not exceed ninety-nine percent (99%) of the amount of general fund revenue estimate for the succeeding fiscal year. The general fund revenue estimate shall be the estimate jointly adopted by the Governor and the Joint Legislative Budget Committee. The Legislative Budget Office may recommend additional taxes or sources of revenue if in its judgment those additional funds are necessary to adequately support the functions of the state government.

SOURCES: Laws, 1984, ch. 488, § 67; Laws, 1992, ch. 484, § 12; Laws, 1993, ch. 509, § 2; Laws, 2001, ch. 518, § 4; Laws, 2003, ch. 507, § 1; Laws, 2004, ch. 595, § 1; Laws, 2005, 2nd Ex Sess, ch. 2, § 1; Laws, 2008, ch. 507, § 2; Laws, 2009, ch. 563, § 1; Laws, 2010, ch. 562, § 1; Laws, 2015, ch. 471, § 2; Laws, 2016, ch. 460, § 2; Laws, 2017, ch. 440, § 1; Laws, 2017, 1st Ex Sess, ch. 6, § 7, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of Chapter 440, Laws of 2017, effective from and after passage (approved April 18, 2017), amended this section. Section 7 of Chapter 6, Laws of 2017 1st Extraordinary Session, effective from and after July 1, 2017 (approved June 23, 2017), also amended this section. As set out above, this section reflects the language of Section 7 of Chapter 6, Laws of 2017 1st Extraordinary Session, which contains language that specifically provides that it supersedes § 27-103-125 as amended by Chapter 440, Laws of 2017.

Editor's Note — Laws of 2001, ch. 518, was House Bill No. 776, 2001 Regular Session, and originally passed both Houses of the Legislature on March 24, 2001. The Governor vetoed House Bill 776 on March 30, 2001. The veto was overridden by the State Senate and by the State House of Representatives on March 30, 2001.

Laws of 2008, ch. 507, § 1, effective April 29, 2008, provides:

"SECTION 1. This act shall be known and may be cited as the 'Budget Reconciliation Act of 2008.'"

Laws of 2017, 1st Extraordinary Session, ch. 6, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Financial and Operational Responses That Invigorate Future Years Act (FORTIFY Act).'"

Amendment Notes — The 2016 amendment inserted "and 2017" in the fifth sentence, and made related stylistic changes.

The first 2017 amendment (ch. 440), effective April 18, 2017, inserted "and for fiscal year 2018...revenue estimate for the succeeding fiscal year" in the fifth sentence.

The second 2017 amendment (ch. 6, 1st Extraordinary Session) inserted "other than unencumbered balances in general funds" in the third sentence; deleted "plus any unencumbered balances in general funds that will be available and on hand at the close of the then current fiscal year" from the end of the fourth and fifth sentences; and deleted the former next-to-last sentence, which read: "Unencumbered balances in general funds that will be available and on hand at the close of the current fiscal year shall not include projected amounts required to be deposited into the Working Cash-Stabilization Reserve Fund under Section 27-103-203."

ATTORNEY GENERAL OPINIONS

Any budget based on a revenue estimate other than that jointly adopted by the Governor and the Joint Legislative Budget Committee as required by the statute would be invalid. Anderson, Nov. 25, 2002, A.G. Op. #02-0674.

§ 27-103-127. Parts 2 and 3 of budget; special fund agency; institutions of higher learning budget; port or harbor agency budgets; department of transportation; division of state aid road construction.

To the end that the overall budget shall present in comparable terms a complete summary of all financial operations of all state agencies, Part 2 of the overall budget shall include therein the requested budget and the recommended budget for each special fund agency. The overall budget shall show for each special fund agency, in addition to such other information as may be prescribed by the Legislative Budget Office, the following:

(a) The amount by source of all special fund receipts collected or otherwise available in the current fiscal year, and an estimate by source of all special funds which will be collected or become available by the end of the then current fiscal year;

(b) The estimated amount of all expenditures to be made or obligations to be incurred payable from such special funds during the then current fiscal year;

(c) The estimated aggregate amount of special funds which will be needed by the agency for the succeeding fiscal year; beginning with the 1995 fiscal year and in the event that any services proposed to be provided by the agency in the succeeding fiscal year are Medicaid reimbursable, any state general matching funds necessary for such reimbursement shall be included in the agency's proposed budget, and the appropriation to the Division of Medicaid in the 1995 fiscal year shall be adjusted accordingly;

(d) The estimated amount by source of special funds which will be available under existing laws during the succeeding fiscal year, including any balances which will be on hand at the close of the then current fiscal year;

(e) The estimated amount which will be needed and which will require change in existing law or laws;

(f) If any new item of expense is included in the proposed budget of any special fund agency, the reason therefor shall be given; and in any case where the Legislative Budget Office shall eliminate or reduce any item or items in the proposed budget of any special fund agency, it shall note briefly the reasons therefor, together with the reasons advanced by the agency in support of the item or items eliminated or reduced;

(g) The proposed budget of each special fund agency shall show the amounts required for operating expenses separately from the amounts required for permanent improvements.

Proposed expenditures for any agency in Part 2 of the overall budget shall not exceed the amount of estimated revenues which will be available to it. Provided, that the Legislative Budget Office may recommend changes in existing law so as to decrease or increase the revenues available to any agency if in its judgment such changes are necessary or desirable.

Provided further, that expenditures approved or authorized by the Legislature for any special fund agency or special funds approved for general fund agency shall constitute a maximum to be expended or encumbered by such agency, and shall not constitute authority to expend or encumber more than the amount of revenue actually collected or otherwise received.

No special fund agency or general fund agency shall make expenditures from special funds available to such agency unless such expenditures are set forth in a budget approved by the Legislature. Such legislative approval shall be set forth in an appropriation act. Provided, however, that special funds derived from the collection of taxes for any political subdivision of the state shall be excepted from the foregoing provisions. The executive head of the state agency shall be liable on his official bond for expenditures or encumbrances which exceed the total amount of the budget or the amount received if receipts are less than the approved budget.

Provided, however, that each university and college shall submit through the Board of Trustees of State Institutions of Higher Learning an annual budget to the Legislative Budget Office prior to the beginning of each fiscal year with such information and in such form, and in such detail, as may be required by the Legislative Budget Office. If the Legislative Budget Office determines that sufficient funds will be available during the fiscal year to fund the proposed budget as submitted, then and in that event the proposed budget shall be approved. However, if the Legislative Budget Office determines that, in its judgment, sufficient funds will not be available to fund the proposed budget, the affected institution or institutions and the Board of Trustees of State Institutions of Higher Learning shall be promptly notified and given an opportunity to either justify the proposed budget or proposed amendments which can be mutually agreed upon. The Legislative Budget Office shall then approve the proposed budget or budgets of the several universities and colleges. The total amount approved for each institution shall constitute the maximum funds which may be expended during the fiscal year.

The municipal, county or combined municipal and county port and harbor commissions, authorities or other port or harbor agencies not owned or operated by the state, shall submit annual or amended budgets of their estimated receipts and expenditures to the governing bodies of such municipality, county or municipality and county, for their approval, and a copy of such budget as approved by such governing body or bodies shall be filed with the

Legislative Budget Office. Such budget shall itemize all estimated receipts and expenditures, and the Legislative Budget Office may require particularization, explanation or audit thereof, and shall report such information to the Legislature.

To the end that the overall budget shall present in comparable terms a complete summary of all financial operations of all state agencies, Part 3 of such overall budget shall consist of an estimated preliminary annual budget of the Department of Transportation and the Division of State Aid Road Construction of the Department of Transportation and such information for the current fiscal year as is necessary to make presentation comparable to that specified for Part 2 special fund agencies.

The annual budget request of the Department of Transportation shall be divided into the following program budgets: (a) administration and other expenses, (b) construction, (c) maintenance, and (d) debt service. In making its annual appropriation to the Department of Transportation from the State Highway Fund, the Legislature shall separate the appropriation bill into the four (4) program budget areas herein specified. For the purposes of this paragraph, "administration and other expenses" shall be construed to mean those expenses incurred due to departmental support activities which cannot be assigned to a specific construction or maintenance project, and shall be construed to include expenses incurred for office machines, furniture, fixtures, automobiles, station wagons, truck and other vehicles, road machinery, farm equipment and other working equipment, data processing and computer equipment, all other equipment, and replacements for equipment. "Construction" shall be construed to mean those expenses associated with the creation and development of the state highway system and its related facilities; "maintenance" shall be construed to mean those expenses incurred due to activities associated with preservation of safe and aesthetically acceptable highways in an attempt to maintain them in as close to the original condition as possible; and "debt service" shall be construed to mean amounts needed to pay bonds and interest coming due, bank service charges, and bond debt service.

SOURCES: Laws, 1984, ch. 488, § 68; Laws, 1986, ch. 480, § 1; Laws, 1994, ch 649, § 10, eff from and after July 1, 1994.

Cross References — Part 1 of the budget, see § 27-103-123.

General powers and duties of the Board of Trustees of State Institutions of Higher Learning, see § 37-101-15.

Department of Transportation audit and budget, see § 65-1-113.

§ 27-103-129. Budget requests; contents of request; detailed justification for vehicle purchase required; emergency requests for vehicle purchases; agency reports of vehicles in possession; exemptions; publication of budget requests on Legislative Budget Office and state agency websites.

(1) To enable the Legislative Budget Office to prepare such budget, it shall have full and plenary power and authority to require all general-fund and special-fund agencies and the Mississippi Department of Transportation and the Division of State Aid Road Construction of the Mississippi Department of Transportation to file a budget request with such information and in such form and in such detail as it may deem necessary and advisable, and it shall have the further power and authority to reduce or eliminate any item or items of requested appropriation by any state agency in the Legislative Budget Office's recommended budget to the Legislature. However, where any item of requested appropriation shall be so reduced or eliminated, the head of the agency involved shall have the right to appear before the appropriate legislative committee to urge a revision of the budget to restore the item reduced or eliminated. The budget requests shall include a definition of the mission of the agency, a description of the duties and responsibilities of the agency, financial data relative to the various programs operated by the agency and performance measures associated with each program of the agency. The performance measures to be contained within the agency budget request shall be developed by cooperative efforts of the Legislative Budget Office, the Department of Finance and Administration and the agency itself and shall be approved jointly by the Legislative Budget Office and the Department of Finance and Administration prior to inclusion within the agency budget request. The budget requests shall also include in an addendum format a five-year strategic plan for the agency which shall include, but not be limited to, the following items of information:

(a) A comprehensive mission statement,

(b) Performance effectiveness objectives for each program of the agency for each of the five (5) years covered by the plan,

(c) A description of significant external factors which may affect the projected levels of performance,

(d) A description of the agency's internal management system utilized to evaluate its performance achievements in relationship to the targeted performance levels,

(e) An evaluation by the agency of the agency's performance achievements in relationship to the targeted performance levels for the two (2) preceding fiscal years for which accounting records have been finalized.

(2) All agencies enumerated in subsection (1) of this section shall include in their budget requests the following information regarding contract workers for the most recently completed fiscal year:

(a) The name of each worker;

(b) The specific type of services provided;

(c) Hourly rate of compensation, or the basis for compensation if a rate other than the hourly rate is used;

(d) Total gross salary or wages paid; and

(e) Whether the worker is a retired member of the Public Employees' Retirement System.

(3)(a) In addition to any other information required by law, each state agency, general-fund agency and special-fund agency, as defined in Section 27-103-103, desiring to purchase any vehicle as defined by this section shall submit as part of its budget request to the Legislative Budget Office and the Department of Finance and Administration a detailed justification for the proposed purchase. The Legislative Budget Office and the Department of Finance and Administration shall jointly prescribe the forms and formats to be used by agencies making the requests. Such forms shall require, at minimum, the following information:

(i) The kind of vehicle to be purchased;

(ii) The person to whom the vehicle will be assigned and the employment responsibilities of that person which necessitate a state-owned vehicle;

(iii) Whether the vehicle is a work vehicle or passenger vehicle; and

(iv) If the vehicle is assigned to a pool and not an individual, the purposes for which the pool vehicle is assigned and the names of the anticipated users of the pool vehicle.

(b) The Legislative Budget Office and the Department of Finance and Administration shall offer a recommendation to the Joint Legislative Budget Committee on all agency requests for vehicles. In making the recommendation, the Legislative Budget Office and the Department of Finance and Administration may consider break-even analyses for the kind of vehicle requested, the travel patterns of the person for whom the vehicle shall be acquired, and shall determine if there exists surplus vehicles in the possession of other agencies that could be used as a substitute for a new vehicle and why such vehicle should not be used. The purchase of vehicles by an agency shall be a specific line item in the agency's appropriation bill.

(c) If an agency determines that an urgent need exists for a vehicle when it is not feasible to obtain prior legislative approval, the agency may make an emergency request to the Bureau of Fleet Management. Any emergency determination shall be made only upon the existence of extraordinary circumstances. The Bureau of Fleet Management shall make a recommendation to the Executive Director of the Department of Finance and Administration and shall give notification of such recommendation to the Lieutenant Governor, the Speaker of the House and the Chairmen of the Senate and House of Representatives Appropriations Committees. The Executive Director of the Department of Finance and Administration shall have the final authority to approve or disapprove the emergency request. The executive director must set forth specific reasons for approval which shall be a public record. If approved and if adequate funding is available, the agency may purchase a specific vehicle to meet its specific emergency needs.

The Bureau of Fleet Management shall report any emergency purchase to the Legislative Budget Office. Any such vehicle shall be subject to the same rules and regulations as provided for nonemergency vehicles.

(d) For purposes of subsections (3) and (4) of this section, the term "passenger vehicle" shall mean a vehicle used primarily in transporting agency personnel and the agency's equipment from one location to another. This term shall include only those vehicles for which a license plate or tag is required under Chapter 19, Title 27, Mississippi Code of 1972.

(e) For purposes of subsections (3) and (4) of this section, the term "work vehicle" shall mean a vehicle used primarily to perform a work assignment or task while incidentally transporting agency personnel and agency equipment from one location to another. This term shall include only those vehicles for which a license plate or tag is required under Chapter 19, Title 27, Mississippi Code of 1972.

(4) All state agencies, special-fund agencies and general-fund agencies making budget requests under the authority of this section shall include with their budget requests a report of all passenger and work vehicles in their possession. Such report shall detail the persons to whom the vehicles are assigned and the purposes for the vehicles.

(5) Subsections (3) and (4) of this section shall not apply to any vehicle assigned to a sworn officer of the Department of Public Safety and used in undercover operations.

(6) The provisions of subsections (3) and (4) of this section shall not apply to any state institution of higher learning.

(7) The purchase of wireless communication devices as defined in Section 25-53-191 by any state agency, special-fund agency or general-fund agency making budget requests under the authority of this section shall be a specific line item in the agency's appropriation bill.

(8)(a) Beginning with the fiscal year 2017 budget submission, the Legislative Budget Office shall annually publish on its website all budget requests submitted under the authority of this section by state agencies, special-fund agencies and general-fund agencies and shall include all budget units for which budget requests are submitted.

(b) Beginning with the fiscal year 2017 budget submission, any state agency, special-fund agency and general-fund agency making a budget request under the authority of this section shall annually publish on its agency website a copy of the budget request that it submitted.

SOURCES: Laws, 1984, ch. 488, § 69; Laws, 1986, ch. 500, § 10; Laws, 1994, ch. 602, § 2; Laws, 2006, ch. 476, § 1; Laws, 2006, ch. 537, § 3; Laws, 2015, ch. 480, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 476, Laws of 2006, effective from and after July 1, 2006, (approved March 27, 2006) amended this section. Section 3 of ch. 537, Laws of 2006, effective from and after July 1, 2005, (approved April 17, 2006) also amended this section. As set out above, this section reflects the language of Section 3 of ch. 537, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Bureau of Fleet Management duties, see § 25-1-77.

Failure or refusal to file budget request, see § 27-103-131.

§ 27-103-131. Failure or refusal to file budget request; proceedings.

If any officer or employee of any state agency whose duty it is to do so shall refuse or fail to file a budget request with such information and in such form and in such detail and within such time as the legislative budget office may require in the exercise of its authority, the director shall prepare and file, or cause to be prepared and filed, a budget request for such agency, and the expense thereof shall be personally borne by said officer or employee, and he or she shall be responsible on his or her official bond for the payment of the expense; provided that a negligently prepared budget shall be considered as a refusal or failure under the provisions of this section. The records of the legislative budget office and the overall budget submitted by it to the Legislature shall clearly identify and set forth all the facts relative to any agency budget request prepared by the director under the authority of this section.

SOURCES: Laws, 1984, ch. 488, § 70, eff from and after July 1, 1984.

§ 27-103-133. Visitation of state agencies; hearings.

The director of the Legislative Budget Office, in person or by assistant, may visit such state agencies as the committee deems necessary to obtain information as to the needs or requirements thereof, and may hold hearings at such place or places as may be designated for such purpose.

SOURCES: Laws, 1984, ch. 488, § 71, eff from and after July 1, 1984.

§ 27-103-135. Information to be furnished by tax, fee-collecting or other revenue-producing agency; reports.

(1) At such regular or special times and on such forms as the Legislative Budget Office may require, every tax or fee-collecting or other revenue-producing agency shall furnish the Legislative Budget Office with complete and detailed information as to the amount of revenue collected or otherwise received by it during the then current fiscal year, together with an estimate of the revenue that is anticipated for such succeeding periods as the Legislative Budget Office may require. In addition, each state agency that maintains funds in accounts that are not in the State Treasury shall furnish the Legislative Budget Office with detailed information about the amount of those funds that the agency has on hand and the location of those funds.

(2) At such regular or special times and on such forms as the State Fiscal Officer may require, every tax or fee-collecting or other revenue-producing

agency shall furnish the Department of Finance and Administration with complete and detailed information as to the amount of revenue collected or otherwise received by it during the then current fiscal year, together with an estimate of the revenue that is anticipated for such succeeding periods as the board may require. The information required to be furnished under this section shall include all revenues from every fee, penalty, tax, assessment or other charge levied, whether authorized by law or not, and shall further include an itemized statement by the agency of the costs of services for which fees are charged, comparing the costs with revenues generated by the fees.

(3) The State Fiscal Officer shall review the information so furnished and report to the Legislature any fees that do not appear to be reasonably calculated to recover the costs of services for which the fees are charged, and any fees that are collected without legal authority.

SOURCES: Laws, 1984, ch. 488, § 72; Laws, 1985, ch. 525, § 3; Laws, 2004, ch. 595, § 4, eff from and after July 1, 2004.

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 27-103-137. Hearings on budget requirements; copies of budget.

The Legislative Budget Office shall hold such hearings as may be necessary to determine the actual budget requirements of the agencies. The state fiscal management board and the governor's budget officer shall be notified of such hearings and the board and any staff members of the board and of the governor's office may attend such hearings in order to give the governor adequate information on which to base any budget recommendations he may desire to submit to the legislature. The Legislative Budget Office shall have made a sufficient number of copies of its proposed budget in order that the data contained therein will be available to the members of the Legislature for consideration, and to provide a copy for each state agency included in the budget proposal, and shall forward a copy to each member or member-elect of the Legislature and to each state agency on or about December 15 of each year.

SOURCES: Laws, 1984, ch. 488, § 73, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

§ 27-103-139. Submission of budget; employment of budget officer.

On or before November 15 preceding each regular session of the Legislature, except the first regular session of a new term of office, the Governor shall submit to the members of the Legislature, the Legislative Budget Office or the members-elect, as the case may be, and to the executive head of each state agency a balanced budget for the succeeding fiscal year. The budget submitted shall be prepared in a format that will include performance measurement data associated with the various programs operated by each agency. The total proposed expenditures in the balanced budget shall not exceed the amount of estimated revenues that will be available for appropriation or use during the succeeding fiscal year, including any balances other than unencumbered balances in general funds that will be on hand at the close of the then current fiscal year, as determined by the revenue estimate jointly adopted by the Governor and the Legislative Budget Committee. The total proposed expenditures from the State General Fund in the balanced budget shall not exceed ninety-eight percent (98%) of the amount of general fund revenue estimate for the succeeding fiscal year. However, for fiscal years 2010, 2011, 2012, 2016 and 2017 only, the total proposed expenditures from the State General Fund in the balanced budget shall not exceed one hundred percent (100%) of the amount of the general fund revenue estimate for the succeeding fiscal year, and for fiscal year 2018, the total proposed expenditures from the State General Fund in the balanced budget shall not exceed ninety-nine percent (99%) of the amount of general fund revenue estimate for the succeeding fiscal year. The general fund revenue estimate shall be the estimate jointly adopted by the Governor and the Joint Legislative Budget Committee.

The revenues used in preparing the balanced budget shall be only those revenues that will be available under the general laws of the state as they exist when the balanced budget is prepared, and shall not include any proposed revenues that would become available only after the enactment of new legislation. If the Governor has any recommendations for additional proposed expenditures or proposed revenues that are not included in his balanced budget, he shall submit those recommendations in a supplement that is separate from his balanced budget, and whenever the Governor recommends any such additional proposed expenditures, he also shall recommend proposed revenues that are sufficient to fund the additional proposed expenditures, providing specific details regarding the sources and the total amount of those proposed revenues.

The Governor may employ a budget officer for the purpose of receiving information from the State Fiscal Officer and preparing his recommendations on the budget. If the Governor determines that information received from the State Fiscal Officer is not sufficient to enable him to prepare his budget recommendations, he may request an appropriation from the Legislature to provide additional staff within the Governor's office for that purpose. At the first regular session after his election for Governor, the Governor shall submit any budget recommendations plus the required revenue source recommendations no later than January 31 of that year.

SOURCES: Laws, 1984, ch. 488, § 74; Laws, 1986, ch. 500, § 11; Laws, 1989, ch. 532, § 50; Laws, 1991, ch. 426, § 1; Laws, 1992, ch. 484, § 13; Laws, 1993, ch. 509, § 3; Laws, 1994, ch. 602, § 4; Laws, 2001, ch. 336, § 2; Laws, 2003, ch. 507, § 2; Laws, 2004, ch. 595, § 2; Laws, 2005, 2nd Ex Sess, ch. 2, § 2; Laws,

2009, ch. 563, § 2; Laws, 2010, ch. 562, § 2; Laws, 2015, ch. 471, § 3; Laws, 2016, ch. 460, § 3; Laws, 2017, ch. 440 § 2; Laws, 2017, 1st Ex Sess, ch. 6, § 8, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 12 of Chapter 517, Laws of 2014, amended this section by adding a second paragraph, which read: "The budget submitted by the Governor shall include the information and recommendations required by Section 6 of this act." Section 6 of the act, referenced in this paragraph, was in the bill as introduced but was removed from the bill before final passage. As there is no corresponding section to change the reference to, the language has been removed from the section at the direction of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The Joint Committee ratified the deletion of this language at its July 1, 2014, meeting.

Section 2 of Chapter 440, Laws of 2017, effective from and after passage (approved April 18, 2017), amended this section. Section 8 of Chapter 6, Laws of 2017, 1st Extraordinary Session, effective from and after July 1, 2017 (approved June 23, 2017), also amended this section. As set out above, this section reflects the language of Section 8 of Chapter 6, Laws of 2017, 1st Extraordinary Session, which contains language that specifically provides that it supersedes § 27-103-139 as amended by Chapter 440, Laws of 2017.

Editor's Note — Laws of 2017, 1st Extraordinary Session, ch. 6, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Financial and Operational Responses That Invigorate Future Years Act (FORTIFY Act).'"

Section 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Amendment Notes — The 2016 amendment inserted "and 2017" in the fifth sentence, and made related stylistic changes.

The first 2017 amendment, (ch. 440), effective April 18, 2017, inserted "and for fiscal year 2018…revenue estimate for the succeeding fiscal year" in the fifth sentence of the first paragraph.

The second 2017 amendment (ch. 6, 1st Extraordinary Session), in the first paragraph, inserted "other than unencumbered balances in general funds" in the third sentence; deleted "plus any unencumbered balances in general funds that will be available and on hand at the close of the then current fiscal year" from the end of the fourth and fifth sentences; and deleted the last sentence, which read: "Unencumbered balances in general funds that will be available and on hand at the close of the fiscal year shall not include projected amounts required to be deposited into the Working Cash-Stabilization Reserve Fund and the Education Enhancement Fund under Section 27-103-203."

Cross References — Powers and duties of Executive Director of the Department of Finance and Administration, see §§ 7-7-1 et seq. and 27-104-1 et seq.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Constitutional and Statutory Balanced Budget Provisions. 82 A.L.R.6th 497.

ATTORNEY GENERAL OPINIONS

Any budget based on a revenue estimate other than that jointly adopted by the Governor and the Joint Legislative Budget Committee as required by the statute would be invalid. Anderson, Nov. 25, 2002, A.G. Op. #02-0674.

MISSISSIPPI PERFORMANCE BUDGET AND STRATEGIC PLANNING ACT OF 1994

Sec.
27-103-151. Short title; purpose.
27-103-153. Appropriation bills to include performance targets; performance measurement data to be maintained and reported.
27-103-155. Evaluation of performance accomplishments; funding; reports; agency five-year strategic plans; Legislature review.
27-103-157. Establishment of innovation incentive program to develop and implement innovative cost saving measures; innovation incentive awards.
27-103-159. Certain state departments required to provide inventory of programs and activities; components of inventory; all state agencies required to provide report of all sources of revenue; components of report.

§ 27-103-151. Short title; purpose.

Sections 27-103-151 through 27-103-157 shall be cited as the "Mississippi Performance Budget and Strategic Planning Act of 1994." The processes and procedures established by Sections 27-103-151 through 27-103-157 are derived in large measure from recommendations contained within the study entitled "The Mississippi Budgeting Process" issued by the Joint Legislative Budget Committee in December 1992 as required by Section 27-103-209.

SOURCES: Laws, 1994, ch. 602, § 1, eff from and after passage (approved April 8, 1994).

Editor's Note — Laws of 1994, ch. 602, § 1, is cited as the "Mississippi Performance Budget and Strategic Planning Act of 1994." In addition to Sections 27-103-151 through 27-103-157, this act also amended Sections 27-103-113, 27-103-129 and 27-103-139.

§ 27-103-153. Appropriation bills to include performance targets; performance measurement data to be maintained and reported.

(1) Beginning with the 1996 fiscal year, the appropriation bills enacted to provide funding for each state agency or institution shall include performance targets for each performance measure established for each program within each such agency. Said performance targets shall be established annually by the Legislature and shall be based upon the funding level authorized for each agency within its appropriation bill. The Department of Finance and Administration shall provide accounting system services to each agency to allow both program expenditures and performance measurement data to be maintained and reported in such form and in such detail as may be required by the Joint Legislative Budget Committee.

(2) As provided in Section 27-103-159, the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation may be exempted from the requirements of this section.

SOURCES: Laws, 1994, ch. 602, § 5; Laws, 2014, ch. 444, § 2, eff from and after July 1, 2014.

§ 27-103-155. Evaluation of performance accomplishments; funding; reports; agency five-year strategic plans; Legislature review.

(1) Beginning with the 1995 fiscal year, the Legislature shall make available funds for the employment of such persons as may be required to conduct an evaluation of the actual performance accomplishments of each agency and its programs in comparison to the targeted performance levels established within the appropriation bill for each agency and its programs. The results of such evaluations shall be prepared in such form and in such detail as may be required by the Joint Legislative Budget Committee. Beginning with the 1996 fiscal year, the Legislative Budget Office and the Department of Finance and Administration shall review the five-year strategic plans submitted by each agency as an addendum to its budget request and shall make copies of said plans available to the Legislature for review and consideration.

(2) As provided in Section 27-103-159, the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation may be exempted from the requirements of this section, except for those requiring the production of agency strategic plans.

SOURCES: Laws, 1994, ch. 602, § 6; Laws, 2014, ch. 444, § 3, eff from and after July 1, 2014.

§ 27-103-157. Establishment of innovation incentive program to develop and implement innovative cost saving measures; innovation incentive awards.

The Department of Finance and Administration is hereby authorized and directed to establish an innovation incentive program whereby agencies which develop and implement innovative cost saving measures can receive both public commendation and monetary reward in recognition of their efforts. The Department of Finance and Administration shall develop policies and procedures as may be required in order to properly administer said program and such policies and procedures shall include the development of evaluation criteria by which the cost saving results of the various innovations can be calculated and compared against the innovations of other agencies. The Department of Finance and Administration shall make all agencies aware of the innovation incentive program and shall encourage the participation of agencies in the program.

The Department of Finance and Administration shall submit its recommendations for innovation incentive awards to the Legislature for consideration on or before January 1 of each year. The recommendations of the Department of Finance and Administration shall include the following items of information: (a) proposed recipients of awards, (b) the proposed amount of the monetary award, and (c) the proposed manner in which the monetary award should be made available to the recipient. The Legislature may hold hearings in regard to the innovations recommended for consideration by the Department of Finance and Administration and may, in its discretion, appropriate funds to reward agencies for innovations.

SOURCES: Laws, 1994, ch. 602, § 7, eff from and after passage (approved April 8, 1994).

ATTORNEY GENERAL OPINIONS

This section does not conflict with Miss. Const., Art. 4, §§ 66 and 96. Bryant, Sept. 17, 2003, A.G. Op. 03-0426.

Any appropriations of funds to agencies is purely within the discretion of the Legislature. There is no requirement that the participating agencies receive monetary awards, even if the Department of Finance and Administration recommends to the Legislature that an award be granted. Bryant, Sept. 17, 2003, A.G. Op. 03-0426.

This section clearly invites agencies to participate in the program, and in the final sentence provides that the Legislature may appropriate funds to agencies, not individuals. Bryant, Sept. 17, 2003, A.G. Op. 03-0426.

§ 27-103-159. Certain state departments required to provide inventory of programs and activities; components of inventory; all state agencies required to provide report of all sources of revenue; components of report.

(1) For purposes of this section, the following terms shall have the following meanings ascribed to them:

(a) "Evidence-based program" shall mean a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(b) "Research-based program" shall mean a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(c) "Promising practices" shall mean a practice that presents, based upon preliminary information, potential for becoming a research-based or evidence-based program or practice.

(d) "Other programs and activities" shall mean all programs and activities that do not fit the definition of evidence-based, research-based or promising practices programs.

(e) "Program inventory" shall mean the complete list of all agency programs and activities that meet any definition set out in this section.

(f) "Program catalogue" means a compendium of programs compiled by a reputable source that publishes information for use by the government.

(2) Beginning with the fiscal year 2016 budget cycle, the Legislative Budget Office shall require the Department of Corrections, the Department of Health, the Department of Education, and the Department of Transportation to comply with the requirements of this section respecting the inventorying of agency programs and activities for use in the budgeting process. The afore-

mentioned agencies shall submit all program information to the Legislative Budget Office in accordance with any policies established by that office setting out requirements for any filings required under this section.

(3) The Legislative Budget Office, the PEER Committee staff, and personnel of each of the agencies set out in this section shall review the programs of each agency and shall:

(a) Establish an inventory of agency programs and activities;

(b) Categorize all agency programs and activities as evidence-based, research-based, promising practices, or other programs and activities with no evidence of effectiveness, and compile them into an agency program inventory. In categorizing programs, the staffs may consult the Washington State Institute for Public Policy's Evidence Based Practices Institute's program catalogue or any other comparable catalogue of evidence-based, research-based, promising practices, or other programs and activities;

(c) Identify agency and program premises, goals, objectives, outcomes and outputs, as well as any other indicator or component the staffs consider to be appropriate;

(d) Establish a procedure for base-lining programs which are built around promising practices or other programs that do not meet the definition of evidence-based or research-based programs, so that further research can be conducted to gauge the program's effectiveness;

(e) Describe any methodologies used to develop any program which is neither evidence-based or research-based; and

(f) Establish a procedure for determining cost-benefit ratios for all programs of each agency.

(4) The Legislative Budget Office shall report to the Legislative Budget Committee the results of all activities required by subsections (1), (2) and (3) of this section with recommendations as to how this information can be incorporated into budget recommendations and the appropriations process. The Legislative Budget Committee may incorporate such recommendations into the fiscal year 2017 budget and appropriations bills, or delay such incorporation until the committee is satisfied that the information collected and inventoried under the requirements of this section will enhance accountability and performance measurement for the programs and activities of state agencies.

(5) Beginning in the fiscal year 2017 budget cycle, the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation may be exempted from the requirement to prepare any information required by Section 27-103-153 and Section 27-103-155, Mississippi Code of 1972, except for the strategic planning requirements of Section 27-103-155.

(6) Beginning with the fiscal year 2017 budget presentation, and each year thereafter, each state agency, general fund agency and special fund agency shall provide to the Joint Legislative Budget Committee a report of all sources of revenue, including the amounts from each source, collected by the agency in the most recent fiscal year. Such report shall include a list of each

tax, fine or fee assessed by the agency, and it shall include the following for each:

(a) The amount assessed;

(b) The amount collected;

(c) The section, regulation, or other authoritative source that authorized their assessment and collection;

(d) The method of determining assessments, including who is assessed, how the agency determines the amount of assessment, including rates;

(e) The methods of collecting the amounts assessed;

(f) The purposes for which the funds were expended by the agency;

(g) The amount of funds transferred to the general fund, if applicable, and the authority by which the transfer took place;

(h) The amount of funds transferred to another entity, if applicable, and the authority by which the transfer took place, as well as the name of the entity to which the funds were transferred;

(i) The fiscal year-end balance of every fund that receives revenue generated by fines and fees; and

(j) Any Maintenance of Effort agreements entered into with any federal agency or subdivision thereof.

For sums received from state sources, the agency shall list each source, including each special fund, along with the amounts received from each fund. For sums received from federal government sources, the agency shall list each source at its most specific level, such as an office or division, not simply the federal department from which it came. The report shall also include a detailed description of the actions or results that were promised by the agency in order to receive these funds.

These reports shall be posted on the Legislative Budget Committee's website.

(7) The Legislative Budget Committee shall, no later than the 2019 Regular Session of the Legislature, make a recommendation to the Legislature regarding the application of the processes and requirements of this section to all agencies of state government.

SOURCES: Laws, 2014, ch. 444, § 1; Laws, 2015, ch. 480, § 1; Laws, 2016, ch. 358, § 1, eff from and after July 1, 2016.

Editor's Note — Laws of 2015, ch. 480, § 3, effective July 1, 2015, provides:

"SECTION 3. (1) From and after October 1, 2015, until dissolution, there is created the Mississippi Fines Accountability and Transparency Task Force. The purpose of the task force is to review the amount of fines collected annually by state agencies that collect fines to determine how the agencies expend those fines annually, and to make recommendations on how the agencies should expend those fines each year to ensure a proper mechanism for transparency between each state agency and the citizens of Mississippi. For the purposes of this act, the term 'agency' has the meaning defined in Section 25-9-107(d).

"(2) The Mississippi Fines Accountability and Transparency Task Force shall be composed of the following eleven (11) members:

"(a) The Chairman of the House of Representatives Select Committee on Accountability, Efficiency and Transparency, or his or her designee;

"(b) The Chairman of the Senate Committee on Accountability, Efficiency and Transparency, or his or her designee;

"(c) The Vice Chairman of the Senate Committee on Accountability, Efficiency and Transparency, or his or her designee;

"(d) The Chairman of the House of Representatives Committee on Fees and Salaries of Public Officers, or his or her designee;

"(e) The Chairman of the House of Representatives Committee on Appropriations, or his or her designee;

"(f) The Chairman of the Senate Committee on Appropriations, or his or her designee;

"(g) One (1) individual from the Joint Committee on Performance Evaluation and Expenditure Review, or his or her designee;

"(h) One (1) individual from the Mississippi Office of the State Auditor;

"(i) One (1) nonlegislative individual appointed by the Speaker of the House of Representatives;

"(j) One (1) nonlegislative individual appointed by the Lieutenant Governor; and

"(k) One (1) nonlegislative individual appointed by the Governor.

"(3) The Mississippi Fines Accountability and Transparency Task Force shall have the following duties:

"(a) To study available information regarding the expenditure of fines by state agencies;

"(b) To seek input, as it deems appropriate from all branches of state and local government, governmental agencies, businesses and nonprofit organizations throughout the state as is necessary for proper review;

"(c) To recommend a mechanism that will provide transparency regarding the expenditure of fines by state agencies;

"(d) To make recommendations based on its findings on how to expend the fines collected by state agencies; and

"(e) To submit the report from its findings to the Legislature and the Governor not later than December 31, 2015.

"(4) After submitting the report required in this subsection (3), the Mississippi Fines Accountability and Transparency Task Force shall be dissolved.

"(5) At its first meeting, the task force shall elect a chairman and vice chairman from its membership and adopt rules for transacting its business and keeping records.

"(6) Notwithstanding any provisions of the laws of the State of Mississippi to the contrary, state agencies shall be required to cooperate with the Mississippi Fines Accountability and Transparency Task Force."

Amendment Notes — The 2016 amendment added (6)(j) and made related changes.

BUDGET REFORM ACT OF 1992

SEC.	
27-103-201.	Short title.
27-103-203.	Proposed budget to include multiyear plan for all agencies included in budget, all funding sources, and identified program categories.
27-103-204.	State Treasurer authorized to borrow funds from Working Cash-Stabilization Reserve Fund and other funds to offset temporary cash flow deficiencies; limited aggregate amount authorized; notice of transfers.
27-103-205.	General Fund Stabilization Reserve and General Fund Reserve abolished; transfer of balances to Working Cash-Stabilization Reserve Fund.
27-103-207.	Working Cash Balance Revolving Fund abolished; allocation of remaining balance.
27-103-209.	Reports on state budget system, privatization of government programs and services, and financial statements and fiscal control systems.
27-103-211.	Limit on legislative appropriation from General Fund.

27-103-213. Unencumbered cash balance in General Fund at the close of each fiscal year to be distributed to certain funds; order of distribution.

§ 27-103-201. Short title.

Chapter 484, Laws of 1992, shall be known and may be cited as the "Budget Reform Act of 1992."

SOURCES: Laws, 1992, ch. 484 § 1, eff from and after passage (approved May 7, 1992).

Editor's Note — Laws of 1992, ch. 484, added §§ 27-103-201 through 27-103-211, and amended several code sections. For a complete list of Code sections affected by chapter 484, see the Statutory Tables volume, Table B, Acts of Legislature for 1992.

§ 27-103-203. Proposed budget to include multiyear plan for all agencies included in budget, all funding sources, and identified program categories.

(1) There is created in the State Treasury a special fund, separate and apart from any other fund, to be designated the Working Cash-Stabilization Reserve Fund.

(2) The Working Cash-Stabilization Reserve Fund shall not be considered as a surplus or available funds when adopting a balanced budget as required by law. The State Treasurer shall invest all sums in the Working Cash-Stabilization Reserve Fund not needed for the purposes provided for in this section in certificates of deposit, repurchase agreements and other securities as authorized in Section 27-105-33(d) or Section 7-9-103, as the State Treasurer may determine to yield the highest market rate available. If the Ayers Settlement Fund is created under Section 37-101-27(5), the first Five Million Dollars ($5,000,000.00) of interest earned on those sums each fiscal year shall be deposited into that fund until a total of Seventy Million Dollars ($70,000,000.00) has been deposited into the fund. The interest, or the remaining interest if the Ayers Settlement Fund is created, that is earned on those sums shall be deposited in the Working Cash-Stabilization Reserve Fund until the balance of principal and interest in the fund reaches ten percent (10%) of the total General Fund appropriations for the current fiscal year, and all interest earned in excess of amounts necessary to maintain the ten percent (10%) fund balance requirement shall be deposited by the State Treasurer into the State General Fund.

(3) The Working Cash-Stabilization Reserve Fund, except for Fifteen Million Dollars ($15,000,000.00) and the amount of the interest and income earned on the principal of the Ayers Endowment Trust created by Section 37-101-27, shall be used by the State Treasurer for cash flow needs throughout the year when the Executive Director of the Department of Finance and Administration certifies that in his opinion there will be cash flow deficiencies in the State General Fund. No borrowing of monies from other special funds for such purposes as authorized by Section 31-17-101 et seq., shall be made as long

as an unencumbered balance in excess of Fifteen Million Dollars ($15,000,000.00) and the interest and income earned on the principal of the Ayers Endowment Trust created by Section 37-101-27 remains in the fund. The State Treasurer shall reimburse the fund for all sums borrowed for those purposes from General Fund revenues collected during the fiscal year in which those funds are used. The State Treasurer shall immediately notify the Legislative Budget Office and the State Department of Finance and Administration of each transfer into and out of the fund. Fifteen Million Dollars ($15,000,000.00) in the Working Cash-Stabilization Reserve Fund shall remain available for exclusive use of the Ayers Endowment Trust created by Section 37-101-27. If the Ayers Settlement Fund is created under Section 37-101-27(5), beginning when a total of Fifty-five Million Dollars ($55,000,000.00) has been deposited into the fund, for each annual deposit of interest to that fund under subsection (2) of this section, the Ayers Endowment Trust created under Section 37-101-27(1) shall be reduced by an equal amount annually until the Ayers Endowment Trust reaches Zero Dollars ($0.00), at which time any requirements concerning the Ayers Endowment Trust in this section shall be null and void.

(4) The Working Cash-Stabilization Reserve Fund, except for Forty Million Dollars ($40,000,000.00), shall also be used for the purpose of covering any projected deficits that may occur in the General Fund at the end of a fiscal year as a result of revenue shortfalls. If the Governor determines that a deficit in revenues from all sources may occur, it shall be the duty of the Executive Director of the Department of Finance and Administration to transfer such funds as necessary to the General Fund to alleviate the deficit in accordance with Sections 27-104-13 and 31-17-123; however, not more than Fifty Million Dollars ($50,000,000.00) may be transferred from the fund for that purpose in any one (1) fiscal year with the exception of fiscal year 2016. However, for fiscal year 2017, not more than One Hundred Million Dollars ($100,000,000.00) may be transferred from the fund for that purpose.

(5) The Working Cash-Stabilization Reserve Fund also shall be used to provide funds for the Disaster Assistance Trust Fund when those funds are immediately needed to provide for disaster assistance under Sections 33-15-301 through 33-15-317. Any transfer of funds from the Working Cash-Stabilization Reserve Fund to the Disaster Assistance Trust Fund shall be made in accordance with the provisions of subsection (5) of Section 33-15-307.

(6) The Department of Finance and Administration shall immediately send notice of any transfers made, or other action taken under authority of this section, to the Legislative Budget Office.

(7) Funds deposited in the Working Cash-Stabilization Reserve Fund shall be used only for the purposes specified in this section, and as long as the provisions of this section remain in effect, no other expenditure, appropriation or transfer of funds in the Working Cash-Stabilization Reserve Fund shall be made except by act of the Legislature making specific reference to the Working Cash-Stabilization Reserve Fund as the source of those funds.

(8) Any funds appropriated from the Working Cash-Stabilization Reserve Fund that are unexpended at the end of a fiscal year shall lapse into the Working Cash-Stabilization Reserve Fund.

SOURCES: Laws, 1992, ch. 484 § 2; Laws, 1993, ch. 412, § 10; Laws, 1993, ch. 509, § 4; Laws, 1997, ch. 583, § 2; Laws, 2001, ch. 518, § 3; Laws, 2001, ch. 520, § 2; Laws, 2004, ch. 596, § 2; Laws, 2008, ch. 455, § 3; Laws, 2015, ch. 471, § 9; Laws, 2016, 2nd Ex Sess, ch. 1, § 1; Laws, 2017, ch. 440 § 3; Laws, 2017, 1st Ex Sess, ch. 6, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 3 of ch. 518, Laws of 2001, effective from and after passage (approved March 30, 2001), amended this section. Section 2 of ch. 520, Laws of 2001, effective from and after one day after the date on which Laws of 2001, ch. 518 became law (March 31, 2001), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 520, Laws of 2001, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 3 of Chapter 440, Laws of 2017, effective from and after passage (approved April 18, 2017), amended this section. Section 2 of Chapter 6, Laws of 2017, First Extraordinary Session, effective from and after July 1, 2017 (approved June 23, 2017), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 6, Laws of 2017, First Extraordinary Session, which contains language that specifically provides that it supersedes § 27-103-203 as amended by Chapter 440, Laws of 2017.

Editor's Note — Laws of 2001, ch. 520, was House Bill No. 1471, 2001 Regular Session, and originally passed both Houses of the Legislature on March 24, 2001. The Governor vetoed House Bill 1471 on March 30, 2001. The veto was overridden by the State Senate and by the State House of Representatives on March 30, 2001.

Laws of 2001, ch. 520, § 3, effective March 31, 2001, provides:

"SECTION 3. This act shall take effect and be in force from and after passage; however, if House Bill No. 776, 2001 Regular Session, becomes law, this act shall take effect and be in force from and after one (1) day after the date on which House Bill No. 776, 2001 Regular Session, becomes law."

Laws of 2004, ch. 303, § 1, effective March 22, 2004, provides:

"SECTION 1. The State Treasurer shall transfer to the Working Cash-Stabilization Reserve Fund created in Section 27-103-203, out of the following enumerated fund, the amount listed below throughout the period beginning upon passage of this act and through June 30, 2004:

Agency/Fund	*Fund No.*	*Amount*
Federal Fiscal Assistance Grant Fund	3997	$32,016,028.00
Total		$32,016,028.00

Laws of 2008, ch. 507, § 5, effective April 29, 2008, provides:

"SECTION 5. The State Fiscal Officer shall transfer to the Working Cash-Stabilization Fund created in Section 27-103-203, One Hundred Thirteen Million Twenty-seven Thousand Four Hundred Eighty-nine Dollars ($113,027,489.00) from the Hurricane Disaster Reserve Fund during the period beginning upon the passage of this act through June 30, 2008."

Laws of 2017, 1st Extraordinary Session, ch. 6, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Financial and Operational Responses That Invigorate Future Years Act (FORTIFY Act).'"

Amendment Notes — The 2016 2nd Extraordinary Session amendment added "with the exception of fiscal year 2016" at the end of (4).

The first 2017 amendment (ch. 440), effective April 18, 2017, added the last sentence of (4).

The second 2017 amendment (ch. 6, 1st Extraordinary Session) substituted "ten percent (10%)" for "seven and one-half percent (7-½%)" twice in the last sentence of (2).

Cross References — Exclusions of Working Cash-Stabilization Reserve Fund and Education Reserve Fund deposits from calculation of General Fund amount from which legislature may make appropriations, see §§ 27-103-125, 27-103-139, and 27-103-211.

Submission of balanced budget by Governor, see § 27-103-139.

Transfer of remaining balances in General Fund Stabilization Reserve and General Fund Reserve into the Working Cash-Stabilization Reserve Fund, see § 27-103-205.

Transfer of money from the Working Cash Balance Revolving Fund into the Working Cash-Stabilization Reserve Fund, see § 27-103-207.

Transfer of funds by state fiscal officer from Working Cash-Stabilization Reserve Fund to General Fund to cover shortage, see §§ 27-104-13 and 31-17-123.

Disaster Assistance Trust Fund, see § 33-15-301 et seq.

§ 27-103-204. State Treasurer authorized to borrow funds from Working Cash-Stabilization Reserve Fund and other funds to offset temporary cash flow deficiencies; limited aggregate amount authorized; notice of transfers.

The State Treasurer is authorized and directed to borrow funds from the Working Cash-Stabilization Reserve Fund created in Section 27-103-203 or from special funds in the State Treasury, or both, to offset any temporary cash flow deficiencies in the Budget Contingency Fund created in Section 27-103-301 regarding Budget Contingency Fund monies generated under Laws, 2002, ch. 539. The amount borrowed from the Working Cash-Stabilization Reserve Fund or from special funds in the State Treasury, or both, shall not exceed One Hundred Nineteen Million Two Hundred Thousand Dollars ($119,200,000.00) in the aggregate. The State Treasurer shall reimburse, from Budget Contingency Fund monies generated under Laws, 2002, ch. 539, the Working Cash-Stabilization Reserve Fund or special funds in the State Treasury, or both, for all sums borrowed for such temporary cash flow deficiency purposes. The State Treasurer shall immediately notify the Legislative Budget Office and the State Department of Finance and Administration of each transfer into and out of such funds.

SOURCES: Laws, 2002, ch. 539, § 5, eff from and after July 1, 2002.

§ 27-103-205. General Fund Stabilization Reserve and General Fund Reserve abolished; transfer of balances to Working Cash-Stabilization Reserve Fund.

(1) The General Fund Stabilization Reserve and the General Fund Reserve are abolished.

(2) Any balances remaining in the General Fund Stabilization Reserve and the General Fund Reserve shall be transferred by the State Treasurer into

the Working Cash-Stabilization Reserve Fund created pursuant to Section 27-103-203.

SOURCES: Laws, 1992, ch. 484 § 3, eff from and after passage (approved May 7, 1992).

§ 27-103-207. Working Cash Balance Revolving Fund abolished; allocation of remaining balance.

The Working Cash Balance Revolving Fund is abolished. Ten Million Dollars ($10,000,000.00) of the balance remaining in the Working Cash Balance Revolving Fund shall be transferred by the State Treasurer into the General Fund and the remainder of such fund shall be transferred by the State Treasurer into the Working Cash-Stabilization Reserve Fund created pursuant to Section 27-103-203.

SOURCES: Laws, 1992, ch. 484, § 4, eff from and after July 1, 1992.

§ 27-103-209. Reports on state budget system, privatization of government programs and services, and financial statements and fiscal control systems.

(1) The Joint Legislative Budget Committee shall study and review the state budgeting system and make comparisons with and evaluations of other budgeting systems in use in other states. The study shall review financial and economic conditions and the associated performance of the budget systems. In reviewing the state budget system, the study shall include an analysis of budget preparation, data gathering and evaluation, development of budget recommendations, revenue forecasting, reporting of revenue collections, appropriation tracking and reporting and tax expenditure reporting.

The Joint Legislative Budget Committee shall file a report of its findings together with any recommendations with the Clerk of the House of Representatives and the Secretary of the Senate not later than December 15, 1992. The Joint Legislative Budget Committee shall utilize staff of the Legislative Budget Office, University Research Center, State Tax Commission and other agencies as necessary.

(2) The Joint Legislative Committee on Performance Evaluation and Expenditure Review shall prepare a report on privatization of government programs and services. The study shall analyze all areas of state government with the objective of identifying programs and services that can be performed by the private sector with lower cost or increased efficiency. Areas of privatization shall include, but not be limited to, contracting-out, competitive bidding and sale of assets. In determining and comparing the costs of performance between the private and public sectors, the actual costs incurred in engaging in the activity shall include the cost and value of labor, real estate, equipment, overhead and other direct expenses. Cost-benefit analysis of current and proposed regulations shall be included. Generally accepted accounting principles shall be followed. Input shall be solicited from representatives of the

private sector. Recommendations shall be provided to the Legislature and the Governor by December 15, 1992.

(3) The Joint Legislative Committee on Performance Evaluation and Expenditure Review shall review the adequacy of financial statements of state government and fiscal control systems including legal authority and methodology of the agencies that prepare public financial statements and exercise control over state expenditures. The review shall focus on the SAAS accounting system and its development, implementation and benefits. A report by the committee on its findings shall be provided to the Legislature and the Governor by December 15, 1992.

SOURCES: Laws, 1992, ch. 484 § 5, eff from and after passage (approved May 7, 1992).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-103-211. Limit on legislative appropriation from General Fund.

The total sum appropriated by the Legislature from the State General Fund for any fiscal year shall not exceed ninety-eight percent (98%) of the general fund revenue estimate for that fiscal year developed by the Department of Revenue and the University Research Center and adopted by the Joint Legislative Budget Committee. The unencumbered balances in general funds that will be available and on hand at the close of the fiscal year shall not include projected amounts required to be deposited into the Working Cash-Stabilization Reserve Fund under Section 27-103-203. However, for fiscal years 2010, 2011, 2012, 2015, 2016 and 2017 only, the total sum appropriated by the Legislature from the State General Fund shall not exceed one hundred percent (100%) of the amount of the general fund revenue estimate for that fiscal year, and for fiscal year 2018, the total sum appropriated by the Legislature from the State General Fund shall not exceed ninety-nine percent (99%) of the amount of the general fund revenue estimate adopted by the Joint Legislative Budget Committee for that fiscal year.

SOURCES: Laws, 1992, ch. 484, § 11; Laws, 1993, ch. 509, § 5; Laws, 2001, ch. 518, § 5; Laws, 2003, ch. 507, § 3; Laws, 2004, ch. 595, § 3; Laws, 2005, 2nd Ex Sess, ch. 2, § 3; Laws, 2008, ch. 507, § 3; Laws, 2009, ch. 563, § 3; Laws, 2010, ch. 562, § 3; Laws, 2014, ch. 534, § 9; Laws, 2015, ch. 471, § 1; Laws, 2016, ch. 460, § 4; Laws, 2017, ch. 440 § 4; Laws, 2017, 1st Ex Sess, ch. 6, § 3, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 4 of Chapter 440, Laws of 2017, effective from and after passage (approved April 18, 2017), amended this section. Section 3 of Chapter 6, Laws of 2017, First Extraordinary Session, effective from and after July 1, 2017 (approved June 23, 2017), also amended this section. As set out above, this section reflects the language of Section 3 of Chapter 6, Laws of 2017, First Extraordinary Session, which contains language that specifically provides that it supersedes § 27-103-211 as amended by Section 4 of Chapter 440, Laws of 2017.

Editor's Note — Laws of 2001, ch. 518, was House Bill No. 776, 2001 Regular Session, and originally passed both Houses of the Legislature on March 24, 2001. The Governor vetoed House Bill 776 on March 30, 2001. The veto was overridden by the State Senate and by the State House of Representatives on March 30, 2001.

Laws of 2008, ch. 507, § 1, effective April 29, 2008, provides:

"SECTION 1. This act shall be known and may be cited as the "Budget Reconciliation Act of 2008."

Laws of 2014, ch. 534, § 10 provides:

"SECTION 10. This act shall take effect and be in force from and after July 1, 2014; however, Sections 4 through 8 of this act shall take effect and be in force from and after the passage of this act [approved April 24, 2014]."

Laws of 2017, 1st Extraordinary Session, ch. 6, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Financial and Operational Responses That Invigorate Future Years Act (FORTIFY Act).'"

Amendment Notes — The 2016 amendment inserted "and 2017" in the third sentence, and made related stylistic changes.

The first 2017 amendment (ch. 440), effective April 18, 2017, inserted "and for fiscal year 2018…revenue estimate for that fiscal year" in the last sentence.

The second 2017 amendment (ch. 6, 1st Extraordinary Session) deleted "plus any unencumbered balances in general funds that will be available and on hand at the close of the then current fiscal year" from the end of the first and last sentences; and inserted "adopted by the Joint Legislative Budget Committee" in the last sentence.

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

University Research Center generally, see § 37-141-1 et seq.

§ 27-103-213. Unencumbered cash balance in General Fund at the close of each fiscal year to be distributed to certain funds; order of distribution.

(1) The unencumbered cash balance in the General Fund in the State Treasury at the close of each fiscal year shall be distributed to the Municipal Revolving Fund, the Working Cash-Stabilization Reserve Fund and the Capital Expense Fund in the manner provided in this section, except for fiscal year 2014 in which the unencumbered cash balance at the close of fiscal year 2014 shall be distributed as provided in subsection (4) of this section, and fiscal year 2016 in which the unencumbered cash balance at the close of fiscal year 2016 shall be distributed as provided in subsection (5) of this section.

(2)(a) At the end of each fiscal year, the Executive Director of the Department of Finance and Administration and the State Treasurer shall determine the extent of the unencumbered cash balance existing in the General Fund in the State Treasury.

(b) As used in this section, the term "unencumbered cash balance" or "unencumbered General Fund cash balance" means the amount in the State General Fund after deducting all appropriations and other expenditures. However, if the Legislature has authorized additional or deficit appropriations or transfers from the State General Fund for that fiscal year, those amounts shall be subtracted from the unencumbered cash balance in the General Fund before determining the amount available for distribution. The unencumbered General Fund cash balance shall not be determined until after August 31 of each year, and it shall not be made until the State Treasurer has received a certificate in writing from the Executive Director of the Department of Finance and Administration, with notification to the Legislative Budget Office, showing the amount of the unencumbered General Fund cash balance.

(3) If any unencumbered General Fund cash balance is available for distribution under this section, the distribution of those funds shall be made by the Executive Director of the Department of Finance and Administration in the following order:

(a) To the Municipal Revolving Fund, an amount equal to Seven Hundred Fifty Thousand Dollars ($750,000.00); however, if the amount of the unencumbered General Fund cash balance is less than Seven Hundred Fifty Thousand Dollars ($750,000.00), then the total amount of the unencumbered General Fund cash balance shall be distributed to the Municipal Revolving Fund.

(b) To the Working Cash-Stabilization Reserve Fund, fifty percent (50%) of the amount of the unencumbered General Fund cash balance after the distributions are made under paragraph (a), not to exceed ten percent (10%) of the General Fund appropriations for the fiscal year that the unencumbered General Fund cash balance represents. For the purposes of this paragraph (b), the appropriations for the fiscal year shall be the total amount contained in the actual appropriation bills passed by the Legislature.

(c) To the Capital Expense Fund, any remaining amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a) and (b).

(4) For fiscal year 2014, if any unencumbered General Fund cash balance is available for distribution under this section at the close of the fiscal year, the distribution of those funds shall be made by the Executive Director of the Department of Finance and Administration in the following order:

(a) To the Municipal Revolving Fund, an amount equal to Seven Hundred Fifty Thousand Dollars ($750,000.00); however, if the amount of the unencumbered General Fund cash balance is less than Seven Hundred Fifty Thousand Dollars ($750,000.00), then the total amount of the unencumbered General Fund cash balance shall be distributed to the Municipal Revolving Fund.

(b) To the Working Cash-Stabilization Reserve Fund, the amount of the unencumbered General Fund cash balance not distributed under paragraph (a) until such time as the balance in the fund reaches Forty Million Dollars ($40,000,000.00).

(c) To the Working Cash-Stabilization Reserve Fund, Two Hundred Eighty-six Million Nine Hundred Fifty-nine Thousand Seven Hundred Ninety-eight Dollars ($286,959,798.00) of the amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a) and (b); however, if the amount of the unencumbered General

Fund cash balance is less than Two Hundred Eighty-six Million Nine Hundred Fifty-nine Thousand Seven Hundred Ninety-eight Dollars ($286,959,798.00), then the total amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a) and (b) shall be distributed to the Working Cash-Stabilization Reserve Fund. For the purposes of this paragraph (c), the appropriations for the fiscal year shall be the total amount contained in the actual appropriation bills passed by the Legislature.

(d) To the Capital Expense Fund, any remaining amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a), (b) and (c).

(5) For fiscal year 2016, if any unencumbered General Fund cash balance is available for distribution under this section at the close of the fiscal year, the distribution of those funds shall be made by the Executive Director of the Department of Finance and Administration in the following order:

(a) To the Municipal Revolving Fund, an amount equal to Seven Hundred Fifty Thousand Dollars ($750,000.00); however, if the amount of the unencumbered General Fund cash balance is less than Seven Hundred Fifty Thousand Dollars ($750,000.00), then the total amount of the unencumbered General Fund cash balance shall be distributed to the Municipal Revolving Fund.

(b) To the Capital Expense Fund, any remaining amount of the unencumbered General Fund cash balance after the distributions are made under paragraph (a).

SOURCES: Laws, 2008, ch. 455, § 1; Laws, 2011, ch. 506, § 6; Laws, 2014, ch. 534, § 4; Laws, 2015, ch. 471, § 15; Laws, 2016, ch. 460, § 5; Laws, 2017, 1st Ex Sess, ch. 6, § 4, eff from and after July 1, 2017.

Editor's Note — Laws of 2017, 1st Extraordinary Session, ch. 6, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Financial and Operational Responses That Invigorate Future Years Act (FORTIFY Act).'"

Laws of 2014, ch. 534, § 10 provides:

"SECTION 10. This act shall take effect and be in force from and after July 1, 2014; however, Sections 4 through 8 of this act shall take effect and be in force from and after the passage of this act [approved April 24, 2014]."

Section 27-103-213 was amended by Section 5 of Chapter 460, Laws of 2016 (HB 878), but there was a typographical error in the section number in the body of the section in the act indicating that the section being amended was 27-203-213. Since the text of the section amended in Section 5 of the act is the text of Section 27-103-213, and there is no existing Section 27-203-213, the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation determined that the intent of the Legislature was to amend existing Section 27-103-213 and not to create a new Section 27-203-213. Section 27-103-213 is set out above as amended by Section 5 of Chapter 460, Laws of 2016, effective July 1, 2016.

Amendment Notes — The 2016 amendment added "and fiscal year 2016…section" at the end of (1); and added (5).

The 2017 amendment inserted "Executive" everywhere it appears; in (3), deleted (b) and (c), which read: "(b) To the Working Cash-Stabilization Reserve Fund, the amount of the unencumbered General Fund cash balance not distributed under paragraph (a) until such time as the balance in the fund reaches Forty Million Dollars ($40,000,000.00). (c) To remain in the State General Fund, an amount equal to one percent (1%) of the General Fund appropriations for the fiscal year that the unencumbered General Fund cash balance represents; however, if the amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a) and (b) is less than one percent (1%) of the General Fund appropriations, then the total amount of the unencumbered General Fund cash balance not distributed under paragraphs (a) and (b) shall remain in the State General Fund. For the purposes of this paragraph (c), the appropriations for the fiscal year shall be the total amount contained in the actual appropriation bills passed by the Legislature," and redesignated the remaining paragraphs accordingly; in (3)(b), substituted "paragraph (a), not to exceed ten percent (10%)" for "paragraphs (a), (b) and (c), not to exceed seven and one-half percent (7-½%)" and "this paragraph (b)" for "this paragraph (d)"; and in (3)(c), substituted "paragraphs (a) and (b)" for "paragraphs (a), (b), (c) and (d)."

BUDGET CONTINGENCY AND CAPITAL EXPENSE FUNDS

SEC.
27-103-301. Budget Contingency Fund created.
27-103-302. Deepwater Horizon settlement funds to be deposited into Budget Contingency Fund.
27-103-303. Capital Expense Fund created; purposes.

§ 27-103-301. Budget Contingency Fund created.

There is created in the State Treasury a special fund to be known as the Budget Contingency Fund, into which shall be deposited any funds designated for deposit therein by law. All funds in the Budget Contingency Fund shall be available for appropriation by the Legislature. Any funds appropriated from the Budget Contingency Fund that are unexpended at the end of a fiscal year shall lapse into the Budget Contingency Fund.

SOURCES: Laws, 2001, ch. 521, § 2; Laws, 2015, ch. 471, § 10, eff from and after passage (approved Apr. 22, 2015.)

Editor's Note — Laws of 1989, ch. 460, §§ 1 and 2, effective from and after July 1, 1989, provide as follows:

"SECTION 1. The State Fiscal Management Board is authorized and empowered to transfer to the State General Fund, out of the following enumerated special funds, amounts not to exceed in the aggregate the sums listed below for each special fund in such a manner throughout the 1990 fiscal year as deemed prudent by the board:

Agency/Fund	*Fund No.*	*Amount*
Unemployment Insurance Fund	3644	$5,500,000
Super Collider Funds	3107	500
	3108	273,272
Treasurer Due Shareholder	3172	250,000
Corrections Bond Fund Interest Income	391A	6,103,191
Local Disaster Emergency Grant	3793	1,000,000
Tax Commission-Telecommunication Fund	3184	500,000
Veteran's Home Construction Fund	3915	402,852
Construction and Renovation	2916	56,000
Fire Academy Construction Fund	3990	509,000

"SECTION 2. With respect to the amount to be transferred from the Treasurer Due Shareholder Fund under the provisions of Section 1, it is the intent of the Legislature that the transfer of these funds shall not excuse the state of any liability due any shareholder."

Laws of 2001, ch. 519, § 1, effective March 30, 2001, provides as follows:

"SECTION 1. The State Treasurer shall transfer to the Budget Contingency Fund created in Senate Bill No. 2680, 2001 Regular Session, out of the following enumerated special funds, amounts listed below for each special fund throughout the period beginning upon passage of this act and through June 30, 2001:

Agency / Fund	*Fund No.*	*Amount*
Department of Insurance	3501	$1,300,000.00
State Fire Academy	3502	500,000.00
Unclaimed Property Fund	3178	5,800,000.00
Criminal Justice Fund	3086	350,000.00
UM - State Court Education Fund	3257	3,600,000.00
Information Technology Services	3601	1,000,000.00
State Personnel Board	3614	700,000.00
Secretary of State	3111	1,300,000.00
Secretary of State	3112	1,200,000.00
Juvenile Detention Fund	3939	1,300,000.00
Local System Bridge Replacement and Rehabilitation Fund	3948	8,000,000.00
Transportation Department	3941	2,550,000.00
Total		$27,600,000.00

"The State Treasurer shall transfer the sum of Eight Hundred Thousand Dollars ($800,000.00) from the State General Funds appropriated for the support of the Mississippi Death Penalty Defense Litigation Act in House Bill No. 1617, Chapter 24, Laws of 2000, not later than June 30, 2001.

"The State Treasurer shall transfer the sum of Thirty-two Million Two Hundred Thousand Dollars ($32,200,000.00) from the State General Fund not later than November 1, 2001.

"The General Funds transferred under this section have been made available for transfer to the Budget Contingency Fund through reductions in various budgets below the level of the Joint Legislative Budget Committee recommendation for Fiscal Year 2002 and have been utilized to support certain nonrecurring funding needs which exceed the level of funding set forth within the Joint Legislative Budget Committee recommendation for Fiscal Year 2002.

"In addition to the amounts transferred to the Budget Contingency Fund under the provisions of this act, the Budget Contingency Fund is herby authorized to receive any additional funds that may become available to the fund from any source during Fiscal Year 2002."

Laws of 2001, ch. 521, was Senate Bill No. 2680, 2001 Regular Session, and originally passed both Houses of the Legislature on March 24, 2001. The Governor vetoed Senate Bill 2680 on March 30, 2001. The veto was overridden by the State Senate and by the State House of Representatives on March 30, 2001.

Laws of 2002, ch. 552, § 1, effective April 10, 2002, provides as follows:

"SECTION 1. The State Treasurer shall transfer to the Budget Contingency Fund created in Senate Bill No. 2680, 2001 Regular Session, out of the following enumerated special funds, amounts listed below for each special fund throughout the period beginning upon passage of this act and through June 30, 2002:

Agency / Fund	*Fund No.*	*Amount*
Unclaimed Property Fund	3178	$4,000,000.00
Department of Transportation	3941	1,400,000.00

Agency/Fund	*Fund No.*	*Amount*
Workers' Compensation Trust Fund	3642	3,400,000.00
Tort Claims Fund	3080	4,000,000.00
Employment Compensation Revolving Fund	3644	1,000,000.00
Mississippi Management Reporting-System	3125	4,000,000.00
Department of Environmental Quality	3584/3586	16,400,000.00
Department of Insurance	3501	1,000,000.00
State Fire Academy	3502	700,000.00
State Aid Road	3948	7,400,000.00
Department of Banking and Consumer-Finance	3511/3512	2,500,000.00
Gaming Commission	3188	500,000.00
Board of Public Contractors	3834	31,200,000.00
Board of Engineers and Land Surveyors	3842	500,000.00
Surveyors	3842	500,000.00
Medical Licensure Board	3829	1,000,000.00
Real Estate Commission	3832	1,200,000.00
Board of Pharmacy	3846	500,000.00
Board of Cosmetology	3822	500,000.00
Board of Nursing	3838	500,000.00
Mississippi Development Authority Cap Loan Program Funds		2,000,000.00
Working Cash-Stabilization Reserve Fund		9,000,000.00
Total		$62,700,000.00

"In addition to the amounts transferred to the Budget Contingency Fund under the provisions of this act, the Budget Contingency Fund is hereby authorized to receive any additional funds that may become available to the fund from any source during Fiscal Year 2002."

Laws of 2002, ch. 552 (HB 1317) became law on April 10, 2002, without the Governor's signature.

Laws of 2003, ch. 556, §§ 1, 2, and 3, effective April 23, 2003, and § 4, as amended by Laws of 2004, ch. 595, § 10, and as amended by Laws of 2005, 2nd ex. sess., ch. 2, § 5, effective May 27, 2005, provide as follows:

"SECTION 1. (1) The State Treasurer shall transfer to the Budget Contingency Fund created in Section 27-103-301, Mississippi Code of 1972, out of the following enumerated funds, amounts listed below for each fund throughout the period beginning upon passage of this act and through June 30, 2003:

Agency/Fund	*Amount*
State General Fund	$3,600,000.00
Working Cash-Stabilization Reserve Fund	$80,854,000.00
Total	$ 84,454,000.00

"(2) From and after July 1, 2003, the State Treasurer shall transfer to the Budget Contingency Fund created in Section 27-103-301, Mississippi Code of 1972, out of the following enumerated funds, amounts listed below for each fund throughout the period beginning July 1, 2003, and through June 30, 2004:

Agency/Fund	*Fund No.*	*Amount*
UM — State Court Education Program	3257	$ 100,000.00
Department of Health	3301	$2,500,000.00

Agency / Fund	*Fund No.*	*Amount*
Employment Compensation Revolving Fund	3644	$1,000,000.00
Unclaimed Property Fund	3178	$5,000,000.00
Gaming Commission	3188	$ 299,391.00
Department of Insurance	3501/3503	$ 400,000.00
Camp Shelby Timber Fund	3700	$ 100,000.00
Real Estate Appraisers Licensing and Certification Board	3836	$ 100,000.00
Public Contractors Board	3834	$ 300,000.00
DPS — Law Enforcement Officers' Standards and Training Board	3742	$2,100,000.00
DPS — Emergency Telecommunications Standards and Training Board	3744	$3,000,000.00
DPS — Crime Stoppers	371D	$ 200,000.00
DPS — County Jail Officers Board	3741	$ 200,000.00
Board of Bar Admissions	3055	$ 350,000.00
Board of Nursing	3838	$ 200,000.00
Motor Vehicle Commission	3839	$ 100,000.00
Board of Registration of Foresters	3844	$ 100,000.00
Board of Pharmacy	3846	$1,000,000.00
Criminal Justice Fund	3086	$350,000.00
MDA — CAP Loan Program	34KX	$3,500,000.00
State General Fund		$147,820,054.00
Department of Transportation	3941	$50,000,000.00
Workers' Compensation Commission	3521	$ 100,000.00
Auctioneers Commission	3820	$ 100,000.00
Securities Act Enforcement Fund	3111/3114	$2,600,000.00
School Ad Valorem Tax Reduction Fund		$46,000,000.00
Total		$267,519,445.00

"(3) In addition to the amounts transferred to the Budget Contingency Fund under the provisions of this act, the Budget Contingency Fund is authorized to receive any additional funds that may become available to the fund from any source during the period beginning upon passage of this act and through June 30, 2004.

"(4) Not later than September 1, 2003, the State Treasurer shall transfer the sum of Fifty Million Dollars ($50,000,000.00) from the Budget Contingency Fund to the Working Cash-Stabilization Reserve Fund.

"SECTION 2. (1) The State Treasurer shall transfer to the Budget Contingency Fund created in Section 27-103-301, Mississippi Code of 1972, out of the following enumerated funds, the amount listed below for each fund throughout the period beginning upon July 1, 2003, and ending June 30, 2004:

Agency / Fund	*Fund No.*	*Amount*
Unclaimed Property Fund	3178	$10,000,000.00
Tort Claims Fund	3080	$14,000,000.00
Department of Environmental Quality		$6,000,000.00
Total		$30,000,000.00

"(2) Upon notification from the State Treasurer, the appropriate agency shall make the transfer from its special funds as required by the State Treasurer.

"SECTION 3. (1) From July 1, 2003, until June 30, 2004, the State Treasurer shall transfer to the Budget Contingency Fund created in Section 27-103-301, Mississippi Code of 1972, from the aggregate of special funds in the State Treasury, an amount equal to Fifty-four Million Dollars ($54,000,000.00) or such lesser amount as provided in subsection (2) of this section. The funds shall be transferred in accordance with a schedule established by the State Treasurer, but the total amount transferred in any one (1) month shall not exceed Thirteen Million Five Hundred Thousand Dollars ($13,500,000.00) and the amount transferred from any one (1) fund during fiscal year 2004 shall not exceed twenty-five percent (25%) of the balance of the fund, as determined by the State Treasurer.

"(2) The amount of Fifty-four Million Dollars ($54,000,000.00) that the State Treasurer is directed to transfer to the Budget Contingency Fund under subsection (1) of this section shall be reduced by the amount of the unencumbered General Fund cash balance at the close of fiscal year 2003 that is deposited into the Working-Cash Stabilization Reserve Fund under Section 27-103-203, Mississippi Code of 1972. The amount of the unencumbered General Fund cash balance at the close of fiscal year 2003 that is deposited into the Working Cash-Stabilization Reserve Fund under Section 27-103-203, Mississippi Code of 1972, shall be transferred from the Working Cash-Stabilization Reserve Fund to the Budget Contingency Fund on the same date that the amount is deposited into the Working Cash-Stabilization Reserve Fund or as soon thereafter as practicable.

"(3) The State Treasurer shall determine which special funds shall be transferred to the Budget Contingency Fund in any month under this section and shall notify the appropriate agency, except that the Working Cash-Stabilization Reserve Fund, trust funds, bond proceed funds, federal funds, special-source funds used to match federal funds, special-source funds to the credit of the Mississippi Department of Transportation, special-source funds listed in Section 2 of this act and special-source funds to the credit of the Department of Mental Health derived from client care, and special-source funds to the credit of the Telecommunications Ad Valorem Tax Reduction Fund established under Section 27-38-7, Mississippi Code of 1972, shall be exempt from any required transfer under this section. Upon notification from the State Treasurer, the agency shall make the transfer from its special funds as required by the State Treasurer.

"SECTION 4. (1) There is created in the State Treasury a special fund to be known as the Special Funds Transfer Fund, which shall be comprised of the monies required to be deposited into the fund under Section 27-65-75(18) for the repayment of certain funds transferred to the Budget Contingency Fund. Upon receipt of monies deposited into the fund under Section 27-65-75(18), the State Treasurer shall transfer those monies to the special funds from which transfers were made under Sections 2 and 3 of Chapter 556, Laws of 2003.

"(2) Unexpended amounts remaining in the fund on September 30, 2008, shall lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund."

Laws of 2004, ch. 303, § 2, effective March 22, 2004, provides:

"SECTION 2. The State Treasurer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated fund, the amount listed below throughout the period beginning upon passage of this act and through June 30, 2004:

Agency/Fund	*Fund No.*	*Amount*
Working Cash-Stabilization Fund	3992	$28,000,000.00
Total		$28,000,000.00

Laws of 2004, ch. 595, § 6, effective May 27, 2004, and §§ 7 and 8, effective July 1, 2004, provide:

"SECTION 6. The State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following special fund, the amount listed below during the period beginning upon the passage of this act through June 30, 2004:

Agency / Fund	*Fund No.*	*Amount*
Casino Roads Bond Sinking Fund	397W	$69,000,000.00
TOTAL		$69,000,000.00

"SECTION 7. (1) The State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated special funds, the amount listed below from each fund throughout the period beginning upon July 1, 2004, and through June 30, 2005:

Agency / Fund	*Fund No.*	*Amount*
Mississippi Department of Transportation (truck and bus permits)	3941	$ 6,000,000.00
State General Fund		102,000,000.00
Working Cash-Stabilization Reserve Fund		8,000,000.00
Mississippi Development Authority/State Aid Roads	34HG	500,000.00
Chiropractic Examiners Board	3849	101,239.00
Criminal Justice Fund	3086	300,000.00
Department of Marine Resources	3452	200,000.00
DFA - Employment Compensation Revolving Fund	3644	471,958.00
DFA - Self-Insured Workers Compensation Fund	3642	2,715,295.00
DPS - Emergency Telecommunications Standards and Training Board	3744	671,292.00
Engineers and Land Surveyors Board	3842	106,647.00
Department of Information Technology Services	3601	360,430.00
Public Contractors Board	3834	351,076.00
State Fire Academy	3502	152,756.00
Treasury - Unclaimed Property Fund	3178	1,000,000.00
UM - State Court Education Program	3257	150,000.00
Department of Wildlife, Fisheries and Parks	3462 and/or 3464, and/or 3461	2,000,000.00
Department of Finance and Administration	3931	6,884,235.00
Insurance Department Fees and Assessments Fund	3501	2,000,000.00
TOTAL		$133,964,928.00

"(2) The funds required to be transferred from the Department of Finance and Administration's Fund No. 3931 in subsection (1) of this section shall be derived from the following projects:

Project No.	Amount
412 — 149	$ 866,136.13

412 — 150	$1,562,064.30
412 — 160	$ 23,730.85
421 — 069	$ 255,331.00
421 — 070	$ 950,433.95
421 — 072	$ 433,294.95
421 — 073	$ 495,100.00
422 — 142	$ 859,643.82
601 — 071	$ 600,000.00
601 — 098	$ 382,000.00
601 — 099	$ 456,500.00
TOTAL	$6,884,235.00

"(3) The funds required to be transferred from the Insurance Department's Fund No. 3501 in subsection (1) of this section shall be derived from funds transferred to the Insurance Department under Section 83-21-21(9), Mississippi Code of 1972, as amended by House Bill No. 834, 2004 Regular Session.

"(4) During the period beginning upon July 1, 2004, and through June 30, 2005, the Board of Levee Commissioners of the Yazoo-Mississippi Delta Levee District, upon demand of the State Fiscal Officer, shall transfer to the State Treasurer a sum or sums not exceeding a total of Five Million Dollars ($5,000,000.00), which shall be deposited into the Budget Contingency Fund.

"SECTION 8. (1) During the period beginning upon July 1, 2004, and until June 30, 2005, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, from the aggregate of special funds in the State Treasury, an amount equal to Eighty-three Million Four Hundred Thousand Dollars ($83,400,000.00). Not later than July 31, 2004, the State Fiscal Officer shall notify each agency that is subject to the provisions of this section of the total amount of funds that the agency shall transfer during the fiscal year and the time period or periods within which the funds must be transferred. The funds shall be transferred in accordance with a schedule established by the State Fiscal Officer, but the total amount transferred in any one (1) month shall not exceed Twenty Million Eight Hundred Fifty Thousand Dollars ($20,850,000.00).

"(2) The State Fiscal Officer shall determine which special funds shall be transferred to the Budget Contingency Fund at any time under this section and shall notify the appropriate agencies, except that the Working Cash-Stabilization Reserve Fund, trust funds, bond proceed funds, federal funds, special-source funds used to match federal funds, special-source funds to the credit of the Mississippi Department of Transportation, special-source funds to the credit of the Department of Mental Health derived from client care, and special-source funds to the credit of the Telecommunications Ad Valorem Tax Reduction Fund established under Section 27-38-7, shall be exempt from any required transfer under this section. Upon notification from the State Fiscal Officer, the agency shall make the transfer from its special funds as required by the State Fiscal Officer."

Laws of 2005, 2nd Ex Sess, ch. 31, § 2 provides as follows:

"SECTION 2. The State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated special funds, the amount listed below for each fund during the period beginning July 1, 2005, and ending June 30, 2006:

Agency/Fund	*Fund No.*	*Amount*
Office of Capital Defense Counsel	3097	$ 37,572.00
District Attorneys and Staff	3087	214,001.00
Criminal Justice Fund	3086	566,403.00
DFA - Employment Compensation Revolving Fund	3644	1,004,107.00
DFA - Self-Insured Workers Compensation Fund	3642	2,300,289.00

Agency / Fund	*Fund No.*	*Amount*
Gaming Commission	3188	255,454.00
Treasury - Unclaimed Property Fund	3178	3,000,000.00
UM - State Court Education Program	3257	150,000.00
Health Department	3301	1,000,000.00
Department of Environmental Quality	3471, and/or 3580, and/or 3584, and/or 3586, and/or 3588, and/or 3590, and/or 3590, and/or 3592	2,500,000.00
Tennessee - Tombigbee Waterway Development Authority Outside of Treasury		99,412.00
Department of Wildlife, Fisheries and Parks	3460 and/or 3462	1,000,000.00
Disaster Relief - Consolidated	3725	200,000.00
Board of Barber Examiners	3840	58,405.00
Board of Cosmetology	3822	524,163.00
Department of Marine Resources - Tidelands Projects	3452	1,200,000.00
Board of Medical Licensure	3829	340,101.00
Motor Vehicle Commission	3839	39,816.00
Board of Optometry	3831	68,906.00
Board of Pharmacy	3846	690,041.00
Board of Physical Therapy	3828	70,994.00
DPS - Emergency Telecommunications Standards and Training Board	3744	791,849.00
Secretary of State	3111 and/or 3114	771,978.00
State Fire Academy	3502	300,000.00
Supreme Court - Continuing Legal Education Fund	3052	13,048.00
Legal Education Fund	3052	13,048.00
Working Cash - Stabilization Reserve Fund	3992	46,732,907.00
State General Fund		126,697,543.00
TOTAL		$190,626,989.00”

Laws of 2006, ch. 534, §§ 1, 2 and 5, effective April 5, 2006, provide as follows:

"SECTION 1. The State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, from the State General Fund, an amount equal to One Hundred Sixty-five Million Two Hundred Thousand Dollars ($165,200,000.00) for the period beginning upon the passage of this act through June 30, 2006.

"SECTION 2. The State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, from the State General Fund, an amount equal to Thirty-seven Million Two Hundred Forty Thousand Dollars ($37,240,000.00) during the period beginning July 1, 2006, and ending June 30, 2007.

"SECTION 5. The Mississippi Public Employees' Retirement System shall transfer from Fund Number 3531 to the Budget Contingency Fund not later than August 31, 2006, any remaining balance as of June 30, 2006, of the Fifty Million Dollars ($50,000,000.00) of General Funds transferred to and utilized by the system as a credit against the one percent (1%) increase in General Fund employer contributions beginning July 1, 2005, pursuant to House Bill No. 1 of the Second Extraordinary Session of 2005."

Laws of 2006, 1st Ex Sess, ch. 8, § 20, effective September 13, 2006, provides:

"SECTION 20. Upon passage of this act, the State Fiscal Officer shall transfer One Hundred Million Dollars ($100,000,000.00) from the Budget Contingency Fund created in Section 27-103-301 to the Disaster Recovery Fund created in Section 31-17-123."

Laws of 2007, ch. 560, § 2, effective April 20, 2007, provides as follows:

"SECTION 2. During fiscal year 2008, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amount listed below from each fund:

Agency / Fund	*Fund No.*	*Amount*
State General Fund		$37,240,000.00
DPS — Emergency Telecommunications Standards and Training Board	3744	500,000.00
Criminal Justice Fund	3086	990,000.00
DFA — Tort Claims Fund	3080	1,500,000.00
Treasury Department — Unclaimed Property	3178	3,000,000.00
TOTAL		$43,230,000.00"

Laws of 2007, ch. 562, §§ 2 and 3, effective April 20, 2007, provide as follows:

"SECTION 2. Section 4 of Chapter 556, Laws of 2003, as amended by Section 10 of Chapter 595, Laws of 2004, as amended by Section 5 of Chapter 2, Laws of Second Extraordinary Session of 2005, which created the Special Funds Transfer Fund, is repealed.

"SECTION 3. The Legislature, in its discretion and as funds become available for that purpose, shall appropriate sufficient funds to repay the Tort Claims Fund (Fund No. 3080) for the Fourteen Million Dollars ($14,000,000.00) that was transferred from the Tort Claims Fund to the Budget Contingency Fund under the provisions of Section 2 of Chapter 556, Laws of 2003."

Laws of 2008, ch. 507, §§ 6 and 7, effective April 29, 2008, provide:

"SECTION 6. During fiscal year 2008, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated fund, the amount listed below from the fund:

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$102,891,399.00
Hurricane Disaster Reserve Fund	37SS	25,567,227.00
Attorney General's Office - State Farm Settlement Trustmark Bank	8017	3,274,152.00
TOTAL		$131,732,778.00

“SECTION 7. During fiscal year 2009, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated fund, the amount listed below from the fund:

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$154,127,000.00
Treasury Department - Unclaimed Property	3178	6,000,000.00
Department of Insurance	3501	2,400,000.00
TOTAL		$162,527,000.00

Laws of 2009, ch. 521, § 6, effective April 13, 2009, provides:

“SECTION 6. During fiscal year 2009, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, from the following state agencies, from any funds to the credit of those agencies, the amounts listed below:

“Agency	Amount
“Governor’s Office - Division of Medicaid	$149,352,445.00
“Department of Mental Health	23,122,141.00
“Department of Rehabilitation Services	2,075,375.00
“State Department of Health	1,325,246.00
“University of Mississippi Medical Center	8,735,399.00
“Treasury Department-Unclaimed Property “(Fund #3178)	3,000,000.00
“TOTAL	$187,610,606.00 ”

Laws of 2009, ch. 563, § 4, as amended by Laws of 2009, Second Extraordinary Session, ch. 126, § 3, effective June 30, 2009, provides as follows:

“SECTION 4. During fiscal year 2010, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

“AGENCY/FUND	FUND NO.	AMOUNT
“State General Fund	2999	$146,672,000.00
“Working Cash-Stabilization “Reserve Fund	3992	65,215,832.00
“Department of Insurance Fund	3501	3,500,000.00
“Restitution Fund	3993	556,804.00
“Unclaimed Property Fund	3178	3,000,000.00
“Archives and History — New “Capitol R R Fund	3480	200,000.00
“Mississippi Department of “Transportation	3941	30,000.00
“State Personnel Board	3610, 3614	1,210,094.00
“Information Technology Services	3601	1,000,000.00
“TOTAL		$251,354,730.00”

“Of the funds provided in this section, the State Fiscal Officer shall make the transfer from Fund Number 3941 in increments of Five Million Dollars ($5,000,000.00) per month for six (6) months beginning in August 2009.”

Laws of 2009, 2nd Ex Sess, ch. 126, § 2, effective June 30, 2009, provides:

“SECTION 2. During fiscal year 2009, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated fund, the amount listed below:

“AGENCY/FUND	FUND NO.	AMOUNT
“Working Cash-Stabilization “Reserve Fund	3992	$29,784,168.00.”

Laws of 2009, 2nd Ex Sess, ch. 126, §§ 4 and 5, effective June 30, 2009, provide:

“SECTION 4. [Repealed by Laws of 2012, ch. 547 § 7, effective July 1, 2012]”

“SECTION 5. During the period from the effective date of House Bill No. 40, 2009 Second Extraordinary Session, through June 30, 2010, the Mississippi Department of

Transportation shall be exempt from any transfer of special funds into the State General Fund or the Budget Contingency Fund created in Section 27-103-301, Mississippi Code of 1972, that is directed or authorized by the Department of Finance and Administration or the State Treasurer."

Laws of 2010, ch. 321, § 2, effective March 11, 2010, provides:

"SECTION 2. (1) During fiscal year 2010, the State Fiscal Officer shall transfer to the Budget Contingency Fund, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
Drug Court Fund	3060	$ 900,000.00
Youth Court Support Fund	3062	800,000.00
TOTAL		$1,700,000.00

"(2) From the funds transferred to the Budget Contingency Fund under subsection (1) of this section, the State Fiscal Officer shall transfer the following specified sums to the agencies listed below:

Agency/Fund	*Amount*
Supreme Court	$ 567,300.00
Court of Appeals	203,700.00
Trial judges	929,000.00
TOTAL	$1,700,000.00

"(3) The agencies listed in subsection (2) of this section are authorized to escalate their budgets by the respective amounts specified for each agency and expend those sums for the purposes authorized by law."

Laws of 2010, ch. 562, § 4, effective May 21, 2010, provides:

"SECTION 4. (1)(a) During fiscal year 2010, the State Fiscal Officer shall transfer to the Budget Contingency Fund the amount listed below from the following fund:

Agency/Fund	*Fund No.*	*Amount*
Unclaimed Property Fund	3178	$1,208,932.00
TOTAL		$1,208,932.00

"(b) From the funds transferred to the Budget Contingency Fund under paragraph (a) of this subsection, the State Fiscal Officer shall transfer the sum of One Million Two Hundred Eight Thousand Nine Hundred Thirty-two Dollars ($1,208,932.00) to the Mississippi Gaming Commission. The commission is authorized to escalate its budget by the amount transferred to the commission under this paragraph and expend that sum for the purposes authorized by law. The sum transferred to the commission under this paragraph shall be a temporary loan to the commission, and the commission shall repay to the Budget Contingency Fund the full amount of that sum during fiscal year 2011.

"(2) During fiscal year 2011, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$103,904,000.00
Working Cash-Stabilization Reserve Fund	3992	80,000,000.00
Unclaimed Property Fund	3178	3,010,952.00
TOTAL		$186,914,952.00

Laws of 2010, ch. 562, § 5, as amended by Laws of 2011, ch. 506, § 3, effective April 26, 2011, provides:

"SECTION 5. Because the federal government has extended the increased Federal Medical Assistance Percentage (FMAP) provided for in the American Recovery and

Reinvestment Act of 2009, the State Fiscal Officer shall transfer to the Governor's Office-Division of Medicaid special fund, Fund No. 3328, during fiscal year 2011, from any funds to the credit of the following agencies, the amounts set forth below:

Agency	Amount
"Department of Mental Health	$8,028,557.00
"Department of Rehabilitation Services	1,707,660.00
"State Department of Health	959,891.00
"University of Mississippi Medical Center	5,349,446.00
"Total	$16,045,554.00

"The Governor's Office-Division of Medicaid is authorized to escalate its budget and expend funds during fiscal year 2011 by the amount transferred in this section."

Laws of 2011, ch. 506, § 1, effective April 26, 2011, provides:

"SECTION 1. (1) (a) During fiscal year 2011, the State Fiscal Officer shall transfer to the Budget Contingency Fund the amounts listed below from the following funds:

Agency / Fund	*Fund No.*	*Amount*
State General Fund	2999	$52,734,878.00
Veterinary Diagnostic Laboratory Board	3427	4,416.18
Agriculture Aviation	3825	8,944.30
Boswell Regional Center-Water System Renovations	3931	54,111.31
Total		$52,802,349.79

"(b) During fiscal year 2011, the State Fiscal Officer shall transfer to the State Treasurer the amounts listed below from the following funds:

Agency / Fund	*Fund No.*	*Amount*
Research and Development/ Business Incubator Revolving Loan Programs	341N, 34MC, 34MN, 34MP	$5,405,057.00
Airport/Port Revitalization Revolving Loan Program	34AV, 34MP	4,812,684.00
Milk Producers Transportation Cost Assistance Loan Program	34AB	1,435,522.00
Moon Lake State Park 2003	346F	2,901,095.00
TOTAL		$14,554,358.00

"The State Treasurer shall use the funds transferred to him for the purpose of paying maturing bonds and interest on the full faith and credit bonds of the State of Mississippi falling due during fiscal year 2012.

Agency / Fund	*Fund No.*	*Amount*
State General Fund	2999	$126,873,000.00
Capital Expense Funds	399C	26,500,000.00
Hurricane Disaster Reserve Fund	3755	27,861,195.00
Working Cash-Stabilization Reserve Fund	3992	87,987,385.00
Department of Insurance	3501	10,000,000.00
DFA - Support	3147	269,185.00
Unclaimed Property Fund	3178	5,500,000.00
Public Service Commission	3811	4,004,222.00
PSC - No Call Telephone		

Agency/Fund	*Fund No.*	*Amount*
Solicitation	3813	90,247.00
PSC - Public Utilities Staff	3812	1,961,276.00
TOTAL		$291,046,510.00”

Laws of 2012, ch. 547, §§ 1 & 7, effective July 1, 2012, provide:

“SECTION 1. (1) During fiscal year 2012, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, the amount listed below from the following fund:

AGENCY/FUND	FUND NO.	AMOUNT
State General Fund	2999	$183,726,491.00

“(2) During fiscal year 2013, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$49,622,038.00
Hurricane Disaster Reserve Fund	3755	26,611,711.00
Department of Finance and Admin. Disaster Recovery Fund	3996	785, 244.00
Treasurer’s Office-Unclaimed Prop.	3178	3,000,000.00
Capital Post-Conviction Counsel	3098	1,037,267.00
Department of Insurance	3501	6,000,000.00
Public Service Commission — Public Utilities	3812	536,872.00
IHL State Court Education Fund	3257	1,500,000.00
Working Cash-Stabilization Reserve Fund	3992	99,562,168.00
TOTAL		$188,655,299.00

“(3) During Fiscal Year 2013, the State Fiscal Officer shall transfer Four Hundred Thousand Dollars ($400,000.00) from the Budget Contingency Fund to the Law Enforcement Officers and Fire Fighters Death Benefits Fund (Fund No. 371G).

“The Department of Public Safety shall have authority to receive, budget and expend the Four Hundred Thousand Dollars ($400,000.00) transferred to Fund No. 371G in this section. This escalation shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

“(4) During Fiscal Year 2013, the State Fiscal Officer shall transfer Two Million Dollars ($2,000,000.00) from the Department of Finance and Administration Air Transport Fund (Fund No. 3135) to the Capital Expense Fund (Fund No. 399C).

“(5) During Fiscal Year 2013, the State Fiscal Officer shall transfer Thirty-three Thousand Four Hundred Twenty-two Dollars ($33,422.00) from the Capital Post-Conviction Counsel Fund (Fund No. 3098) to the Judicial Performance Fund (Fund No. 3095). If House Bill No. 878, Regular Legislative Session of 2012, is enacted increasing Fiscal Year 2013 fees for the Judicial Performance Commission above the Fiscal Year 2012 level, the State Fiscal Officer shall not make the above-mentioned transfer from the Capital Post-Conviction Counsel Fund to the Judicial Performance Fund.

“(6) During Fiscal Year 2012, the State Fiscal Officer shall transfer Two Million Five Hundred Thousand Dollars ($2,500,000.00) from the MMEIA-Tax Incentive Fund (Fund No. 34TT) to the Budget Contingency Fund (Fund No. 3177).

“(7) During Fiscal Year 2013, the State Fiscal Officer shall transfer Ten Million Ninety-seven Thousand Four Hundred Forty-three Dollars ($10,097,443.00) from the Capital Expense Fund (Fund No. 399C) to the Budget Contingency Fund (Fund No. 3177).

“(8) During Fiscal Year 2013, the State Fiscal Officer shall transfer Three Million Dollars ($3,000,000.00) from the Budget Contingency Fund (Fund No. 3177) to the Mississippi Development Authority.

"The Mississippi Development Authority shall have authority to receive, budget and expend Three Million Dollars ($3,000,000.00) of Budget Contingency Funds transferred in this section. This escalation shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds."

Laws of 2012, ch. 558, § 1, effective May 25, 2012, provides:

"SECTION 1. All funds received by or on behalf of the State of Mississippi through a negotiated settlement for economic damages in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, except for any funds that are required by the settlement to be paid to any other public entity, shall be deposited into the Budget Contingency Fund for appropriation by the Legislature."

Laws of 2013, ch. 301, § 1, effective March 6, 2013, provides:

"SECTION 1. During fiscal year 2013, the State Fiscal Officer shall transfer the sum of Fifty-two Million Dollars ($52,000,000.00) from the Motor Vehicle Ad Valorem Tax Reduction Fund created in Section 27-51-105 (Fund No. 3769) to the Budget Contingency Fund."

Laws of 2013, ch. 518, § 1, effective July 1, 2013, provides:

"SECTION 1. During fiscal year 2014, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
General Fund	2999	$17,588,141.00
Working Cash-Stabilization Reserve Fund	3992	109,812,343.00
Secretary of State	3111	226,000.00
Insurance Department	3501	6,000,000.00
Treasurer's Office-Unclaimed Prop.	3178	3,950,000.00
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	3079	1,620,045.00
TOTAL		$139,196,529.00"

Cross References — Deposit of state's share of oil and gas severance taxes collected into Budget Contingency Fund, see § 27-25-506.

§ 27-103-302. Deepwater Horizon settlement funds to be deposited into Budget Contingency Fund.

All funds received by or on behalf of the State of Mississippi through a negotiated settlement for economic damages in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, except for any funds that are required by the settlement to be paid to any other public entity, shall be deposited into the Budget Contingency Fund for appropriation by the Legislature.

SOURCES: Laws, 2012, ch. 558, § 1, eff from and after passage (approved May 23, 2012.)

Editor's Note — Chapter 558, Laws of 2012, was not codified during the 2012 Regular Session because it appeared at the time that the BP settlement (a result of the 2010 Gulf of Mexico BP oil spill, also known as the Deepwater Horizon Oil Spill) would be a one-time payment and thus temporary in nature. Temporary bills are not typically codified in the Mississippi Code of 1972 Annotated. Section 1 of the act was instead noted under Code Section 27-103-301.

On July 2, 2015, officials in Alabama, Florida, Louisiana, Mississippi and Texas accepted an $18.7 billion settlement with BP for compensation for the 2010 Gulf of Mexico BP oil spill. Under the terms of the agreement, Mississippi will be receiving payments from BP for a number of years. As a result, the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation determined that Section 1 of Chapter 558, Laws of 2012, is no longer temporary in nature and should therefore be codified as this section.

§ 27-103-303. Capital Expense Fund created; purposes.

(1) There is created in the State Treasury a special fund, separate and apart from any other fund, to be designated the Capital Expense Fund.

(2) The Capital Expense Fund shall not be considered as a surplus or available funds when adopting a balanced budget as required by law. The State Treasurer shall invest all sums in the Capital Expense Fund not needed for the purposes provided for in this section in certificates of deposit, repurchase agreements and other securities as authorized in Section 27-105-33(d) or Section 7-9-103, as the State Treasurer may determine to yield the highest market rate available. Interest earned on this fund shall be deposited by the State Treasurer into the State General Fund.

(3) The Capital Expense Fund shall be used for capital expense needs, repair and renovation of state-owned properties and specific expenditures authorized by the Legislature. The Legislature shall designate those capital expense projects, repair and renovation projects and other authorized projects in an appropriation act passed by the Legislature, which shall direct the Director of the Department of Finance and Administration to administer the projects.

(4) In addition to the purposes specified in subsection (3) of this section, the Capital Expense Fund shall be used to provide funds for emergency repairs on state-owned buildings and the emergency plugging of orphaned wells identified by the Oil and Gas Board, upon requisition of the Director of the Department of Finance and Administration. Whenever the director determines that funds are immediately needed for emergency repairs on state-owned buildings or the Oil and Gas Board has requested funds for the emergency plugging of orphaned wells identified by the board, he shall requisition the funds needed from the Capital Expense Fund, which shall be subject to the limitations set forth in this subsection. At the same time he makes the requisition, the director shall notify the Lieutenant Governor, the Speaker of the House of Representatives, the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee and the House Ways and Means Committee and the Legislative Budget Office of his determination of the need for the funds, the amount that he has requisitioned and where the funds will be used. If the amount requisitioned is available in the Capital Expense Fund, is not allocated for any specific projects as authorized in subsection (3) of this section and is within the limitations set forth below in this subsection, then the director may escalate the budget of the Bureau of Building, Grounds and Real Property Management or the Oil and Gas Board to use the full amount of the requisitioned funds for

the emergency repairs or plugging of orphaned wells, and transfer that amount to the bureau or board for that purpose. If the amount requisitioned is more than the amount available in the Capital Expense Fund or above the limitations set forth below in this subsection, then the director may escalate the budget of the bureau or board to use the amount that is available within the limitations for the emergency repairs or plugging of orphaned wells, and transfer that amount to the bureau or board for that purpose. The maximum amount that may be transferred from the Capital Expense Fund to the bureau or board for any single emergency shall be One Million Dollars ($1,000,000.00), and the maximum amount that may be transferred to the bureau or board for all emergencies during any fiscal year shall be Five Million Dollars ($5,000,000.00).

(5) Funds deposited in the Capital Expense Fund shall be used only for the purposes specified in this section, and as long as the provisions of this section remain in effect, no other expenditure, appropriation or transfer of funds in the Capital Expense Fund shall be made except by act of the Legislature making specific reference to the Capital Expense Fund as the source of those funds.

(6) Unexpended funds in the Capital Expense Fund at the end of a fiscal year shall not lapse into the State General Fund but shall remain in the fund for use under this section. Any funds appropriated from the Capital Expense Fund that are unexpended at the end of a fiscal year shall lapse into the Capital Expense Fund.

SOURCES: Laws, 2008, ch. 455, § 2; Laws, 2015, ch. 471, § 11; Laws, 2017, 1st Ex Sess, ch. 7, § 26, eff from and after passage (approved June 23, 2017.)

Editor's Note — Laws of 2013, ch. 518, § 4, as amended by Laws of 2014, ch. 534, § 6, provides:

"SECTION 4. The Executive Director of the Department of Finance and Administration shall have the authority to transfer from the Capital Expense Fund created in Section 27-103-303 such amounts as necessary not exceeding a total of Two Million Dollars ($2,000,000.00) for the purpose of paying the cost of repairs of damage caused by the hail storm on March 18, 2013. These funds may be transferred in anticipation of insurance settlements from the storm. No funds transferred under this section shall be expended for agency administrative costs, including, but not limited to, agency employee salaries or travel. The Executive Director of the Department of Finance and Administration may escalate the department's budget and expend the transferred funds in accordance with the rules and regulations of the department in a manner consistent with the escalation of federal funds."

Laws of 2013, ch. 518, § 5, as amended by Laws of 2014, ch. 534, § 7, provides:

"SECTION 5. The Executive Director of the Department of Finance and Administration shall have the authority to transfer from the Capital Expense Fund created in Section 27-103-303 such amounts as necessary not exceeding a total of Fifteen Million Dollars ($15,000,000.00) for the purpose of providing the funds necessary to continue the operations of the MAGIC project, the state's primary data processing system for tracking, managing, and reporting critical financial information. The Department of Finance and Administration shall notify the State Treasurer, the Lieutenant Governor, the Speaker of the House of Representatives, the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee, the House Ways and Means Committee and the Legislative Budget Office when funds are transferred under this section. No funds transferred under this section shall be expended for agency administrative costs, including, but not limited to, agency employee salaries or travel. The Executive Director of the Department of Finance and Administration may escalate the department's budget and expend the transferred funds in accordance with the rules and regulations of the department in a manner consistent with the escalation of federal funds."

Laws of 2014, ch. 534, § 5, provides:

"SECTION 5. During fiscal year 2014, the State Fiscal Officer shall transfer from the State General Fund to the Capital Expense Fund the sum of Eight Hundred Thousand Dollars ($800,000.00)."

Laws of 2015, ch. 471, § 4, provides:

"SECTION 4. During fiscal year 2015, the State Fiscal Officer shall transfer to the Capital Expense Fund out of the following enumerated funds, the amounts listed below from each fund:

FUND	FUND NUMBER	AMOUNT
General Fund	2999000000	$50,010,621.00
Budget Contingency Fund	6117700000	474,198.00
Treasurer's Office - Abandoned Property	3317800000	18,000,000.00
TOTAL		$68,484,819.00"

Laws of 2016, ch. 460, § 1, effective upon approval May 9, 2016, provides:

"SECTION 1. (1) During fiscal year 2016, the State Fiscal Officer shall transfer to the Capital Expense Fund out of the following enumerated funds, the amounts listed below from each fund:

FUND	FUND NUMBER	AMOUNT
Secretary of State	3311E00000	
	3311100000	
	3311000000	
	3311C00000	
	3311M00000	
	3311P00000	
	3311A00000	
	3311800000	
	3311200000	
	3311400000	18,000,000.00
Public Service Commission	3381100000	5,000,000.00
Public Service Commission - Utilities Staff	3381700000	300,000.00
Information Technology Services	3360100000	500,000.00
State Personnel Board	3361400000	
	3361100000	1,000,000.00
Department of Insurance	6350E00000	
	3350100000	
	3350300000	
	3350000000	
	3350H00000	
	6350J00000	
	6350K00000	
	3350500000	

FUND	FUND NUMBER	AMOUNT
	3350600000	
	3350700000	
	3350900000	
	3350C00000	6,000,000.00
Department of Finance and Administration - Support	3312100000	
	3312200000	
	3312500000	
	3312600000	
	3312800000	
	3313000000	
	3313100000	
	3313200000	
	3313500000	
	3313600000	
	3313800000	1,200,000.00
Mississippi Gaming Commission	3318700000	
	3318800000	1,500,000.00
Oil and Gas Board	3349100000	
	3349300000	15,000,000.00
Mississippi Workers' Compensation Commission	3352100000	
	3352200000	1,500,000.00
Total		$50,000,000.00

"(2) During fiscal year 2017, the State Fiscal Officer shall transfer to the Capital Expense Fund out of the following enumerated funds, the amounts listed below from each fund:

FUND	FUND NUMBER	AMOUNT
Unclaimed Property Fund	3317800000	$14,000,000.00
Board of Nursing	3383800000	8,000,000.00
Medical Licensure Board	3382900000	2,000,000.00
Department of Corrections	3355100000	
	3355200000	500,000.00
Board of Dental Examiners	3382400000	500,000.00
Board of Engineers and Land Surveyors	3384200000	500,000.00
Motor Vehicle Commission	3383900000	500,000.00
Budget Contingency Fund	6117700000	1,114,646.00
Hurricane Disaster Reserve Fund	667SS00000	1,780,930.00
Total		$28,895,576.00"

Laws of 2017, ch. 440, § 7, effective April 18, 2017, provides:

FUND	FUND NUMBER	AMOUNT
Unclaimed Property Fund	3317800000	$17,000,000.00

FUND	FUND NUMBER	AMOUNT
Department of Revenue	3376900000	$15,000,000.00
Total		$32,000,000.00”

Amendment Notes — The 2017 amendment, effective June 23, 2017, substituted “expenditures” for “projects” in the first sentence of (3); in (4), inserted “or board” everywhere it appears, and “or plugging of orphaned wells” everywhere it appears in the fourth and fifth sentences, inserted “and the emergency plugging of orphaned wells identified by the Oil and Gas Board” in the first sentence, “or the Oil and Gas Board has requested funds for the emergency plugging of orphaned wells identified by the board” in the second sentence, and “or the Oil and Gas Board” in the fourth sentence, and substituted “One Million Dollars ($1,000,000.00)” for “Five Hundred Thousand Dollars ($500,000.00)” and “Five Million Dollars ($5,000,000.00)” for “Two Million Dollars ($2,000,000.00)” in the last sentence.

CHAPTER 104

State Fiscal Affairs

In General 27-104-1
Revenue Maximization Contracts 27-104-81
Department of Finance and Administration 27-104-101
Mississippi Accountability and Transparency Act 27-104-151
Mississippi Budget Transparency and Simplification Act of 2016 27-104-201

IN GENERAL

Sec.
27-104-1. Department of Finance and Administration to be State Fiscal Management Board; agencies to file reports; Department to study creation, abolition or consolidation of agencies and departments.
27-104-3. Powers and duties of Department of Finance and Administration.
27-104-4. Preparation of annual financial statements by each state agency; consolidated report.
27-104-5. Executive Director of department; salary; bond; powers and duties.
27-104-6. Executive Director to be State Fiscal Officer.
27-104-7. Creation of public procurement review board; quorum; meetings; support personnel; powers and duties [Subsection (9) effective January 1, 2018, repealed effective July 1, 2019].
27-104-8. Repealed.
27-104-9. Submission of agency operating budget.
27-104-11. Expenditures by agency.
27-104-13. Revision of budget estimates for and reduction of funding allocations to general-fund and special-fund agencies and for "administration and other expenses" budget of Mississippi Department of Transportation; general fund revenue estimate to be adopted by Legislative Budget Office by sine die adjournment; transfers to General Fund.
27-104-14. Rescission or restoration of reductions or revisions of estimates or allocations of general funds.
27-104-15. Hearings as to revision of agency budget estimates.
27-104-17. Allotment period; time for filing of budget estimates; restriction of agency expenditures; special reserve funds; emergency measures; prior approval required to hire certain retired employees under contract.
27-104-19. Availability of funds after approval of operating budget.
27-104-21. Application for federal funds; expenditure of funds; use of revenue generated from Statewide Cost Allocation Fund; excess funds transferred to State General Fund.
27-104-23. Records and accounts; reports.
27-104-25. Responsibility for obligations or indebtedness incurred in name of agency; limitations on obligations or indebtedness; payment of claims from prior fiscal year.
27-104-27. Application of provisions to funds granted or allotted under act of Congress; exemption of agency; exceptions.
27-104-29. Injunctive action by attorney general.
27-104-31. Powers and duties of Executive Director of the Department of Finance and Administration acting through insurance division.
27-104-33. Payment by credit card, charge card, debit card, or other form of electronic payment of amounts owed to state agencies.

§ 27-104-1. Department of Finance and Administration to be State Fiscal Management Board; agencies to file reports; Department to study creation, abolition or consolidation of agencies and departments.

The Department of Finance and Administration shall be the Fiscal Management Board and shall retain all powers and duties granted by law to the Fiscal Management Board. Wherever the term "Fiscal Management Board" appears in any law the same shall mean the Department of Finance and Administration. The Executive Director of the Department of Finance and Administration may assign to the appropriate division or divisions such powers and duties as deemed appropriate to carry out the department's lawful functions.

All general fund agencies shall file a monthly report of receipts, disbursements, assets, liabilities, encumbrances, and fund balances with the Department of Finance and Administration on or before the fifteenth day of the succeeding month. The reports must contain such information and in such form as shall be required by the department. Special fund agencies may be required to file monthly operating statements or reports, or such agencies may be required to file quarterly or annual reports. The determination of the type of reports and the periods to be covered by such reports shall be determined by the Department of Finance and Administration.

The Department of Finance and Administration shall make continuous and careful study of all state agencies and departments and it may make recommendations to the State Legislature for abolition or consolidation or creation of state agencies and departments.

SOURCES: Laws, 1984, ch. 488, § 75; reenacted and amended, Laws, 1986, ch. 409; Laws, 1989, ch. 532, § 51; Laws, 1989, ch. 544, § 14, eff from and after July 1, 1989.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — State bond advisory division, see §§ 7-1-401 and 7-1-403.

Affect of a member of any board, commission, council or authority changing domicile, see § 7-13-9.

General provisions regarding the reorganization of the executive branch of government, see § 7-17-1 et seq.

Definitions of terms used in Sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

Department of Finance and Administration, see §§ 27-104-101 and 27-104-103.

Inapplicability of this chapter to agencies supported wholly by funds granted under an Act of Congress and to funds collected and disbursed by a state agency under Sections 65-33-45 and 65-33-47 or by a state agency which exists under Sections 73-3-101 through 73-3-169, see § 27-104-27.

Duties of department with respect to Crime Victims' Compensation Act, see § 99-41-1 et seq.

ATTORNEY GENERAL OPINIONS

There is no authority for governing boards of public universities, community colleges, and school districts to obtain credit cards to be issued in the names of the respective institutions to officers or employees for use in the course and scope of employment. Murray, Nov. 17, 2000, A.G. Op. #2000-0654.

§ 27-104-3. Powers and duties of Department of Finance and Administration.

In addition to other powers and duties prescribed by statute, the Department of Finance and Administration shall have the following powers and duties, with regard to fiscal management:

(a) Provide direct technical assistance and training to state agencies and departments in implementing generally accepted accounting principles, in preparing financial statements as required by law, and in management and executive development.

(b) Provide temporary administrative services in financial accounting and public administration to any state agency, department or institution upon request of the governing board of the state agency, department or institution.

(c) Prepare and issue a comprehensive reference manual or manuals of policies and procedures for each state agency and department to use, which may include chapters on purchasing, personnel, payroll, travel, chart of accounts, fund classifications, receipts, warrants, expenditures, fixed assets, property inventory, and maintaining financial records and preparing financial reports as required and prescribed by law. The manual shall be revised on a continuing basis. The manual shall be prepared and revised in consultation with the State Auditor's office.

(d) Provide assistance to any state agency, department or institution in collecting a fee or other valid obligation that another agency, department or institution has failed to pay to it. For purposes of this paragraph, the agency, department or institution seeking to collect the funds shall be referred to as the "creditor agency," and the agency, department or institution that has not paid the creditor agency shall be referred to as the "delinquent agency." A valid obligation may be evidenced by an invoice or any other documentation as may be required by the Department of Finance and Administration, hereinafter referred to as the department. A creditor agency may request assistance from the department, and the department may require the creditor agency to furnish detailed information regarding the obligation. Upon determining that the delinquent agency owes the creditor agency a specific amount, the State Fiscal Officer shall pay to the creditor agency that amount out of any funds in the State Treasury to the credit of the delinquent agency. The State Fiscal Officer shall notify the creditor agency and the delinquent agency of the total amount of funds transferred. Either agency may appeal the transfer of funds or the failure to transfer funds, under rules and regulations promulgated by the department and approved by the Office of the State Auditor. The Department of Finance and Administration shall report any actions taken under this paragraph (d) to the Chairmen of the Appropriations Committees of the House of Representatives and the Senate on a quarterly basis.

(e) To issue a request for an ACA-compliant health insurance policy, or policies, to offer health insurance coverage to the full-time equivalent employees not otherwise eligible to participate in the State and School Employees' Health Insurance Plan; and to issue a request for administrative support in order to meet reporting requirements under Internal Revenue Code Section 6056 and to comply with the Patient Protection and Affordable Care Act of 2010.

SOURCES: Laws, 1984, ch. 488, § 141; Laws, 1986, ch. 500, § 12; Laws, 1989, ch. 532, § 52; Laws, 1989, ch. 544, § 15; Laws, 2006, ch. 353, § 1; Laws, 2008, ch. 470, § 1; Laws, 2016, ch. 433, § 1; Laws, 2016, ch. 479, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 1 of Chapter 433, Laws of 2016, effective from and after July 1, 2016 (approved April 18, 2016), amended this section. Section 1 of Chapter 479, Laws of 2016, effective from and after July 1, 2016 (approved May 11, 2016), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 479, Laws of 2016, which contains language that specifically provides that it supersedes § 27-104-3 as amended by Laws of 2016, ch. 433.

Editor's Note — Laws of 1989, ch. 460, §§ 1 and 2, effective from and after July 1, 1989, provide as follows:

"SECTION 1. The State Fiscal Management Board is authorized and empowered to transfer to the State General Fund, out of the following enumerated special funds, amounts not to exceed in the aggregate the sums listed below for each special fund in such a manner throughout the 1990 fiscal year as deemed prudent by the board:

Agency / Fund	*Fund No.*	*Amount*
Unemployment Insurance Fund	3644	$5,500,000
Super Collider Funds	3107	500
	3108	273,272
Treasurer Due Shareholder	3172	250,000
Corrections Bond Fund Interest Income	391A	6,103,191
Local Disaster Emergency Grant	3793	1,000,000
Tax Commission-Telecommunication Fund	3184	500,000
Veteran's Home Construction Fund	3915	402,852
Construction and Renovation	2916	56,000
Fire Academy Construction Fund	3990	509,000

"SECTION 2. With respect to the amount to be transferred from the Treasurer Due Shareholder Fund under the provisions of Section 1, it is the intent of the Legislature that the transfer of these funds shall not excuse the state of any liability due any shareholder."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Amendment Notes — The first 2016 amendment (ch. 433) added (e).

The second 2016 amendment (ch. 479) added "and to issue a request...Affordable Care Act of 2010" at the end of (e).

Cross References — Powers and duties of Department in regard to federal-state programs, see § 7-1-255.

Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

Powers and duties of Executive Director of department, see § 27-104-5.

Limit on Executive Director of The Department of Finance and Administration's authority to promulgate or enforce certain rules, orders, or regulations, see § 27-104-27.

Powers and duties of Department of Finance and Administration, see § 27-104-103.

Withdrawal of funds from the Institute for Technology Development Fund upon warrants issued by the Department of Finance and Administration, see § 31-29-21.

Water Pollution Control Revolving Fund, see § 49-17-81 et seq.

Provision that the books, documents, records and transactions relating to the receipt of monies with respect to bad check complaints and restitution thereon are subject to audit by the Executive Director of the Department of Finance and Administration, see § 97-19-77.

Federal Aspects — The Patient Protection and Affordable Care Act (Pub. L. No. 111-148), referred to in this section, is codified throughout Title 42 of the U.S. Code, but primarily as 42 USCS § 18001, et seq.

Internal Revenue Code Section 6056, see 26 USCS § 6056.

§ 27-104-4. Preparation of annual financial statements by each state agency; consolidated report.

(1) Each state agency shall prepare annual financial statements at such times as required by the State Fiscal Officer. The statements shall be in accordance with generally accepted accounting principles. The State Fiscal Officer, in consultation with the State Auditor, shall prescribe rules and regulations to implement and specify the records, procedures and accounting systems necessary to carry out the provisions of this section.

(2) The State Fiscal Officer shall combine the financial statements of the various state agencies into a comprehensive annual financial report for the State of Mississippi and shall provide it to the State Auditor by September 30 of each year for postauditing. This report, together with the State Auditor's opinion on the financial statements, shall be published as the official financial statement of the state in accordance with Section 115 of the Mississippi Constitution, and it or comparable condensed version shall be distributed to the Governor, other state officials, members of the Legislature and other interested persons. The comprehensive annual financial report shall be prepared in accordance with generally accepted accounting principles, shall be audited by the State Auditor's office in accordance with generally accepted auditing standards, and shall be published within six (6) months after the June 30 close of each fiscal year.

(3) Within twelve (12) months of the June 30 close of each fiscal year, the State Auditor's Office shall publish the State Auditor's statements on internal control systems and on compliance with federal grant requirements and with applicable state and federal laws, that conforms to the requirements of the Single Audit Act of 1984 for audit coverage of state and federal funds received by all state agencies.

SOURCES: Laws, 1986, ch. 499, § 5; Laws, 1989, ch. 532, § 53; Laws, 1997, ch. 337, § 1, eff from and after July 1, 1997.

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional powers and duties of the Executive Director of the Department of Finance and Administration, see § 7-7-1 et seq.

Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Preparation of comprehensive financial report by Executive Director of the Department of Finance and Administration, see § 7-7-45.

Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

Federal Aspects — Single Audit Act of 1984 is codified at 31 USCS § 7501 et seq.

§ 27-104-5. Executive Director of department; salary; bond; powers and duties.

(1) The Executive Director of the Department of Finance and Administration shall receive an annual salary to be set by the State Personnel Board, unless otherwise provided for by law. He shall devote his full time to the office and shall not pursue any other business or occupation or hold any other office of profit. The executive director (a) shall be a certified public accountant; or (b) shall possess a master's degree in business, public administration or a related field; or (c) shall have at least ten (10) years' experience in fiscal management in the private or public sector and a minimum of five (5) years' experience in a high-level management position with a documented record of management. Said qualifications shall be certified by the State Personnel Board.

The executive director shall execute a bond in some surety company authorized to do business in the state, to be approved by the Governor, and filed in the Office of the Secretary of State in the penal sum of One Hundred Thousand Dollars ($100,000.00), conditioned for the faithful and impartial discharge of the duties of his office. The premium on such bond shall be paid as provided by law out of funds appropriated to the Department of Finance and Administration.

(2) The executive director shall have the following powers and responsibilities:

(a) Employment of such professional, administrative, stenographic, secretarial, clerical and technical assistance as may be necessary to perform the duties and responsibilities of the department subject to the rules and regulations of the State Personnel Board;

(b) Developing accurate and timely revenue forecasts;

(c) Allotting appropriated funds consistent with agency appropriations;

(d) Prescribing and implementing an accounting system using generally accepted accounting principles;

(e) From and after October 1, 1986, preaudit and payment of funds which shall be in accordance with all laws and regulations;

(f) Development and implementation of fiscal management training;

(g) Development of short- and long-range planning pertaining to matters of revenue forecasting;

(h) Providing assistance and expertise to state agency and institution governing bodies or other agency management, pursuant to Section 27-104-3;

(i) Cooperation and coordination with the State Auditor, State Treasurer, Commissioner of Revenue, University Research Center and the Mississippi Legislature on all matters pertaining to the fiscal matters of Mississippi state government; and

(j) The authority to establish training courses in programs for the personnel of the various governmental entities under the jurisdiction of the department. The training courses and programs shall include, but not be limited to, topics on internal control of funds, governmental accounting and financial reporting, internal auditing, and budgeting. The executive director is authorized to charge a fee from the participants of these courses and programs, which fee shall be deposited into a special fund created for these deposits. State and local governmental entities are authorized to pay such fee, and any travel expenses, out of their general funds or any available funds from which such payment is not prohibited by law.

SOURCES: Laws, 1984, ch. 488, § 76; Laws, 1986, ch. 499, § 4; Laws, 1988, ch. 518, § 17; Laws, 1989, ch. 532, § 54; Laws, 1989, ch. 544, § 16, eff from and after July 1, 1989.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2005, 2nd Ex Sess, ch. 4, § 1, effective June 2, 2005, provides as follows:

"SECTION 1. (1) The State Fiscal Officer shall transfer general funds in the amounts listed below to the specified agencies and accounts held in the State Treasury during the period beginning upon the passage of this act:

Agency / Fund	*Fund No.*	*Amount*
Public Employees' Retirement System	3531	$50,000,000.00
Mississippi Development Authority	34CW	$35,000,000.00
Mississippi Department of Public Safety	3711	$5,000,000.00
UMC — Cancer Institute	3283	$10,000,000.00
TOTAL		$100,000,000.00

"(2) It is the intent of the Legislature to transfer certain funds paid into the State General Fund upon receipt thereof by MCI, Inc., on behalf of itself and reorganized debtors as the settlement payment and release under Chapter 11 Case No. 02-13533: (a) to the Mississippi Public Employees' Retirement System administration fund to be utilized by the system as a credit against the one percent (1%) increase in general fund employer contributions beginning July 1, 2005, until exhausted; (b) to the Mississippi Development Authority during fiscal year 2005 in order to fulfill the state's obligations relating to the Mississippi Beef Processors, LLC, up to Thirty-five Million dollars ($35,000,000.00), as necessary, with any remaining balance to lapse into the State General Fund; (c) to the Mississippi Department of Public Safety, Three Million Dollars ($3,000,000.00) of which shall be used to fund a Highway Patrol Cadet Class, and Two Million Dollars ($2,000,000.00) shall be used to purchase equipment; and (d) to the University of Mississippi Medical Center Cancer Institute in order to fund the operation of the Institute during fiscal years 2006 and 2007."

Laws of 2005, 2nd Ex Sess, ch. 31, § 3, effective July 1, 2005, provides as follows:

"SECTION 3. The State Fiscal Officer shall transfer Sixteen Million Four Hundred Twenty-one Thousand Nine Hundred Twenty-three Dollars ($16,421,923.00) from Fund No. 4201 to Fund No. 4230."

Laws of 2006, ch. 403, § 1, effective March 15, 2006, provides as follows:

"SECTION 1. (1) The State Fiscal Officer shall transfer general funds in the amounts listed below to the specified agencies and accounts held in the State Treasury during the period beginning upon the passage of this act:

Agency/Fund	*Fund No.*	*Amount*
Public Employees' Retirement System	3531	$50,000,000.00
Mississippi Development Authority	34CW	$35,000,000.00
Mississippi Department of Public Safety	3711	$5,000,000.00
UMC — Cancer Institute	3283	$10,000,000.00
TOTAL		$100,000,000.00

"(2) It is the intent of the Legislature to transfer certain funds paid into the State General Fund upon receipt thereof by MCI, Inc., on behalf of itself and reorganized debtors as the settlement payment and release under Chapter 11 Case No. 02-13533: (a) to the Mississippi Public Employees' Retirement System administration fund to be utilized by the system as a credit for agencies or entities receiving general funds as follows: (i) for state agencies, the credit will be against the one percent (1%) increase attributable to general fund employer contributions only; and (ii) for universities, community and junior colleges and public school districts, the credit will be against the one percent (1%) increase attributable to funds from all sources except federal funds; (b) to the Mississippi Development Authority during fiscal year 2005 in order to fulfill the state's obligations relating to the Mississippi Beef Processors, LLC, up to Thirty-five Million Dollars ($35,000,000.00), as necessary, with any remaining balance to lapse into the State General Fund; (c) to the Mississippi Department of Public Safety, Three Million Dollars ($3,000,000.00) of which shall be used to fund a Highway Patrol Cadet Class, and Two Million Dollars ($2,000,000.00) shall be used to purchase equipment; and (d) to the University of Mississippi Medical Center Cancer Institute in order to fund the operation of the Institute during fiscal years 2006 and 2007."

Laws of 2006, ch. 534, § 3, effective April 5, 2006, provides as follows:

"SECTION 3. There is hereby created in the State Treasury a special fund, separate and apart from any other special fund, to be designated as the Hurricane Disaster Reserve Fund. The State Fiscal Officer shall transfer from the State General Fund into the Hurricane Disaster Reserve Fund an amount equal to Two Hundred Sixty-eight Million Dollars ($268,000,000.00) during the period beginning July 1, 2006, and ending June 30, 2007.

"The funds transferred herein to the Hurricane Disaster Reserve Fund shall be utilized to defray the state's share of any nonfederal matching requirements for Federal Emergency Management Agency grants associated with Hurricane Katrina and other disasters. Unexpended funds remaining in the Hurricane Disaster Reserve Fund at the end of the fiscal year shall not lapse into the State General Fund but shall remain in the fund and any interest earned on the Hurricane Disaster Reserve Fund shall remain in the fund.

"Funds deposited into the Hurricane Disaster Reserve Fund shall be used only for the purposes specified in this section, and as long as the provisions of this section remain in effect, no other expenditure, appropriation or transfer of funds in the Hurricane Disaster Reserve Fund shall be made except by act of the Legislature making specific reference to the Hurricane Disaster Reserve Fund as the source of those funds."

Laws of 2006, 1st Ex Sess, ch. 8, § 18, effective September 13, 2006, provides:

"SECTION 18. Section 3, Chapter 534, Laws of 2006, is amended as follows:

"Section 3. There is hereby created in the State Treasury a special fund, separate and apart from any other special fund, to be designated as the Hurricane Disaster Reserve Fund. The State Fiscal Officer shall transfer from the State General Fund into the Hurricane Disaster Reserve Fund an amount equal to Two Hundred Sixty-eight Million Dollars ($268,000,000.00) during the period beginning July 1, 2006, and ending June 30, 2007.

"The funds transferred herein to the Hurricane Disaster Reserve Fund shall be utilized to defray the state's share of any nonfederal matching requirements for Federal Emergency Management Agency grants associated with Hurricane Katrina and other disasters. Unexpended funds remaining in the Hurricane Disaster Reserve Fund at the end of the fiscal year shall not lapse into the State General Fund but shall remain in the fund and any interest earned or investment earnings on amounts in the Hurricane Disaster Reserve Fund shall remain in the fund; however, any interest earned or investment earnings on amounts in the fund during fiscal years 2007 and 2008 shall be transferred by the State Treasurer to the Emergency Aid to Local Governments Fund created in Section 27-107-321.

"Funds deposited into the Hurricane Disaster Reserve Fund shall be used only for the purposes specified in this section, and as long as the provisions of this section remain in effect, no other expenditure, appropriation or transfer of funds in the Hurricane Disaster Reserve Fund shall be made except by act of the Legislature making specific reference to the Hurricane Disaster Reserve Fund as the source of those funds."

Laws of 2008, ch. 427, § 4, effective April 3, 2008, provides:

"SECTION 4. During fiscal year 2008, the State Fiscal Officer shall transfer Four Hundred Thirty-six Thousand Three Hundred Forty-five Dollars ($436,345.00) from the Workers' Compensation Commission Administrative Expense Fund (Fund No. 3521) to the Bureau of Building, Grounds and Real Property Management Fund (Fund No. 3931). These funds shall be used for the purpose of defraying the costs of repair, renovation and expenses related to the usage of the Workers' Compensation Commission Office Building."

Laws of 2009, 2nd Ex Sess, ch. 126, § 1, effective June 30, 2009, provides:

"SECTION 1. During fiscal year 2009, the State Fiscal Officer shall transfer to the General Fund out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
"Hurricane Disaster Reserve Fund	37SS	$ 3,505,281.00
"Disaster Recovery Fund	3996	13,006,065.00
"Emergency Aid Fund	39EA	4,974,032.00
"Budget Contingency Fund		158,764,766.00
"Total		$180,250,144.00"

Laws of 2014, ch. 534, § 5, effective July 1, 2014, provides:

"SECTION 5. During fiscal year 2014, the State Fiscal Officer shall transfer from the State General Fund to the Capital Expense Fund the sum of Eight Hundred Thousand Dollars ($800,000.00)."

Cross References — Powers and duties of executive director in regard to federal-state programs, see § 7-1-255.

Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

Limit on Executive Director of The Department of Finance and Administration's authority to promulgate or enforce certain rules, orders, or regulations, see § 27-104-27.

Creation and organization of Department of Finance and Administration, see § 27-104-101.

Powers and duties of Department of Finance and Administration, see § 27-104-103.

Powers and duties of executive director with regard to the Iran Divestment Act of 2015, see §§ 27-106-9 and 27-106-11.

Powers and duties of executive director with regard to nonmilitary aircraft, see § 61-13-1 et seq.

§ 27-104-6. Executive Director to be State Fiscal Officer.

The Executive Director of the Department of Finance and Administration shall be the State Fiscal Officer and shall carry out all powers and duties assigned to the State Fiscal Officer and wherever the term "State Fiscal Officer" appears in any law the same shall mean Executive Director of the Department of Finance and Administration.

SOURCES: Laws, 1989, ch. 544, § 17, eff from and after July 1, 1989.

Cross References — General provisions regarding the reorganization of the executive branch of government, see § 7-17-1 et seq.

Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

ATTORNEY GENERAL OPINIONS

The term "State Auditor" in Section 49-17-69 refers to and means the State Fiscal Officer as defined in Sections 7-7-2 and 27-104-6. Bryant, Dec. 28, 1999, A.G. Op. #99-0693.

§ 27-104-7. Creation of public procurement review board; quorum; meetings; support personnel; powers and duties [Subsection (9) effective January 1, 2018, repealed effective July 1, 2019].

[Effective until January 1, 2018, this section will read:]

(1) There is created within the Department of Finance and Administration the Public Procurement Review Board, which shall be composed of the Executive Director of the Department of Finance and Administration, the head of the Office of Budget and Policy Development and an employee of the Office of General Services who is familiar with the purchasing laws of this state. The Executive Director of the Department of Finance and Administration shall be chairman and shall preside over the meetings of the board. The board shall

annually elect a vice chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Two (2) members shall be a quorum. No action shall be valid unless approved by the chairman and one (1) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. The board shall meet on a monthly basis and at any other time when notified by the chairman. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office.

(2) The Public Procurement Review Board shall have the following powers and responsibilities:

(a) Approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities and equipment, except computer equipment acquired pursuant to Sections 25-53-1 through 25-53-29;

(b) Adopt regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities as well as related contracts for architectural and engineering services;

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space; the terms of the lease; the approximate square feet to be leased; the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management of the Department of Finance and Administration or the Public Procurement Review Board. The information shall be provided sufficiently in advance of the time the space is needed to allow the Division of Real Property Management of the Department of Finance and Administration to review and preapprove the lease before the time for advertisement begins;

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

(i) Black: having origins in any of the black racial groups of Africa;

(ii) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race;

(iii) Asian-American: having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(iv) American Indian or Alaskan Native: having origins in any of the original peoples of North America; or

(v) Female;

(e) In consultation with and approval by the Chairmen of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building.

(3) No member of the Public Procurement Review Board shall use his official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities or the contracting for public construction under this chapter.

(4) Notwithstanding any other laws or rules to the contrary, the provisions of subsection (2) of this section shall not be applicable to the Mississippi State Port Authority at Gulfport.

[Effective January 1, 2018, this section will read:]

(1)(a) There is created the Public Procurement Review Board, which shall be reconstituted on January 1, 2018, and shall be composed of the following members:

(i) Three (3) individuals appointed by the Governor with the advice and consent of the Senate;

(ii) Two (2) individuals appointed by the Lieutenant Governor with the advice and consent of the Senate; and

(iii) The Executive Director of the Department of Finance and Administration, serving as an ex officio and nonvoting member.

(b) The initial terms of each appointee shall be as follows:

(i) One (1) member appointed by the Governor to serve for a term ending on June 30, 2019;

(ii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2020;

(iii) One (1) member appointed by the Governor to serve for a term ending on June 30, 2021;

(iv) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2019; and

(v) One (1) member appointed by the Lieutenant Governor to serve for a term ending on June 30, 2020.

After the expiration of the initial terms, all appointed members' terms shall be for a period of four (4) years from the expiration date of the previous term, and until such time as the member's successor is duly appointed and qualified.

(c) When appointing members to the Public Procurement Review Board, the Governor and Lieutenant Governor shall take into consideration persons who possess at least five (5) years of management experience in general business, healthcare or finance for an organization, corporation or other public or private entity. Any person, or any employee or owner of a company, who receives any grants, procurements or contracts that are subject to approval under this section shall not be appointed to the Public Procurement Review Board. Any person, or any employee or owner of a company, who is a principal of the source providing a personal or professional service shall not be appointed to the Public Procurement Review Board if the principal owns or controls a greater than five percent (5%) interest or has an ownership value of One Million Dollars ($1,000,000.00) in the source's business, whichever is smaller. No member shall be an officer or employee of the State of Mississippi while serving as a voting member on the Public Procurement Review Board.

(d) Members of the Public Procurement Review Board shall be entitled to per diem as authorized by Section 25-3-69 and travel reimbursement as authorized by Section 25-3-41.

(e) The members of the Public Procurement Review Board shall elect a chair from among the membership, and he or she shall preside over the meetings of the board. The board shall annually elect a vice chair, who shall serve in the absence of the chair. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three (3) members shall be a quorum. No action shall be valid unless approved by a majority of the members present and voting, entered upon the minutes of the board and signed by the chair. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the chairs of the Appropriations Committees of the Senate and House of Representatives.

(2) The Public Procurement Review Board shall have the following powers and responsibilities:

(a) Approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities and equipment, except computer equipment acquired pursuant to Sections 25-53-1 through 25-53-29;

(b) Adopt regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities as well as related contracts for architectural and engineering services;

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require each agency requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space; the terms of the lease; the approximate square feet to be leased; the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management of the Department of Finance and Administration or the Public Procurement Review Board. The information shall be provided sufficiently in advance of the time the space is needed to allow the Division of Real Property Management of the Department of Finance and Administration to review and preapprove the lease before the time for advertisement begins;

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

(i) Black: having origins in any of the black racial groups of Africa;

(ii) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race;

(iii) Asian-American: having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(iv) American Indian or Alaskan Native: having origins in any of the original people of North America; or

(v) Female;

(e) In consultation with and approval by the Chairs of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building;

(f) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into by any agency that employs only nonstate service employees as defined in Section 25-9-107(c), any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the individual state institutions of higher learning, any personal service contracts entered into by the Mississippi Department of Transportation, any personal service contracts entered into by the Department of Human Services through June 30, 2019, which the Executive Director of the Department of Human Services determines would be useful in establishing and operating the Department of Child Protection Services, any personal service contracts entered into by the Department of Child Protection Services through June 30, 2019, any contracts for entertainers and/or performers at the Mississippi State Fairgrounds entered into by the Mississippi Fair Commission, and any contract for attorney, accountant, actuary auditor, architect, engineer, and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d). Any rules and regulation changes related to personal and professional services contracts that the Public Procurement Review Board may propose shall be submitted to the Chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the Chairs of the Appropriation Committees of the Senate and House of Representatives at least fifteen (15) days before the board votes on the proposed changes, and those rules and regulation changes, if adopted, shall be promulgated in accordance with the Mississippi Administrative Procedures Act;

(g) Approve all personal and professional services contracts involving the expenditures of funds in excess of Seventy-five Thousand Dollars ($75,000.00), except as provided in paragraph (f) of this subsection (2) and in subsection (8);

(h) Develop mandatory standards with respect to contractual services personnel that require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Public Procurement Review Board shall, unless exempted under this paragraph (h) or under paragraph (i) or (o) of this subsection (2), require the agency involved to submit the procurement to a competitive procurement process, and may reserve the right to reject any or all resulting procurements;

(i) Prescribe certain circumstances by which agency heads may enter into contracts for personal and professional services without receiving prior approval from the Public Procurement Review Board. The Public Procurement Review Board may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board;

(i) Agency requirements may be fulfilled by procuring services performed incident to the state's own programs. The agency head shall determine in writing whether the price represents a fair market value for the services. When the procurements are made from other governmental entities, the private sector need not be solicited; however, these contracts shall still be submitted for approval to the Public Procurement Review Board.

(ii) Contracts between two (2) state agencies, both under Public Procurement Review Board purview, shall not require Public Procurement Review Board approval. However, the contracts shall still be entered into the enterprise resource planning system.

(j) Provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the administrative monitoring of contract performance by the agency and successful steps in terminating a contract;

(k) Present recommendations for governmental privatization and to evaluate privatization proposals submitted by any state agency;

(*l*) Authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract, except the State Board of Education, which shall have the authority to enter into contractual agreements for student assessment for a period up to ten (10) years. The State Board of Education shall procure these services in accordance with the Public Procurement Review Board procurement regulations;

(m) Request the State Auditor to conduct a performance audit on any personal or professional service contract;

(n) Prepare an annual report to the Legislature concerning the issuance of personal and professional services contracts during the previous year, collecting any necessary information from state agencies in making such report;

(o) Develop and implement the following standards and procedures for the approval of any sole source contract for personal and professional services regardless of the value of the procurement:

(i) For the purposes of this paragraph (o), the term "sole source" means only one (1) source is available that can provide the required personal or professional service.

(ii) An agency that has been issued a binding, valid court order mandating that a particular source or provider must be used for the required service must include a copy of the applicable court order in all future sole source contract reviews for the particular personal or professional service referenced in the court order.

(iii) Any agency alleging to have a sole source for any personal or professional service, other than those exempted under paragraph (f) of this subsection and subsection (8), shall publish on the procurement portal website established by Sections 25-53-151 and 27-104-165, for at least fourteen (14) days, the terms of the proposed contract for those services. In addition, the publication shall include, but is not limited to, the following information:

1. The personal or professional service offered in the contract;

2. An explanation of why the personal or professional service is the only one that can meet the needs of the agency;

3. An explanation of why the source is the only person or entity that can provide the required personal or professional service;

4. An explanation of why the amount to be expended for the personal or professional service is reasonable; and

5. The efforts that the agency went through to obtain the best possible price for the personal or professional service.

(iv) If any person or entity objects and proposes that the personal or professional service published under subparagraph (iii) of this paragraph (o) is not a sole source service and can be provided by another person or entity, then the objecting person or entity shall notify the Public Procurement Review Board and the agency that published the proposed sole source contract with a detailed explanation of why the personal or professional service is not a sole source service.

(v)1. If the agency determines after review that the personal or professional service in the proposed sole source contract can be provided by another person or entity, then the agency must withdraw the sole source contract publication from the procurement portal website and submit the procurement of the personal or professional service to an advertised competitive bid or selection process.

2. If the agency determines after review that there is only one (1) source for the required personal or professional service, then the agency may appeal to the Public Procurement Review Board. The agency has the burden of proving that the personal or professional service is only provided by one (1) source.

3. If the Public Procurement Review Board has any reasonable doubt as to whether the personal or professional service can only be provided by one (1) source, then the agency must submit the procurement of the personal or professional service to an advertised competitive bid or selection process. No action taken by the Public Procurement Review Board in this appeal process shall be valid unless approved by a majority of the members of the Public Procurement Review Board present and voting.

(vi) The Public Procurement Review Board shall prepare and submit a quarterly report to the House of Representatives and Senate Accountability, Efficiency and Transparency Committees that details the sole source contracts presented to the Public Procurement Review Board and the reasons that the Public Procurement Review Board approved or rejected each contract. These quarterly reports shall also include the documentation and memoranda required in subsection (4) of this section. An agency that submitted a sole source contract shall be prepared to explain the sole source contract to each committee by December 15 of each year upon request by the committee.

(p) Assess any fines and administrative penalties provided for in Sections 31-7-401 through 31-7-423.

(3) All submissions shall be made sufficiently in advance of each monthly meeting of the Public Procurement Review Board as prescribed by the Public Procurement Review Board. If the Public Procurement Review Board rejects any contract submitted for review or approval, the Public Procurement Review Board shall clearly set out the reasons for its action, including, but not limited to, the policy that the agency has violated in its submitted contract and any corrective actions that the agency may take to amend the contract to comply with the rules and regulations of the Public Procurement Review Board.

(4) All sole source contracts for personal and professional services awarded by state agencies, other than those exempted under Section 27-104-7(2)(f) and (8), whether approved by an agency head or the Public Procurement Review Board, shall contain in the procurement file a written determination for the approval, using a request form furnished by the Public Procurement Review Board. The written determination shall document the basis for the determination, including any market analysis conducted in order to ensure that the service required was practicably available from only one (1) source. A memorandum shall accompany the request form and address the following four (4) points:

(a) Explanation of why this service is the only service that can meet the needs of the purchasing agency;

(b) Explanation of why this vendor is the only practicably available source from which to obtain this service;

(c) Explanation of why the price is considered reasonable; and

(d) Description of the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

(5) In conjunction with the State Personnel Board, the Public Procurement Review Board shall develop and promulgate rules and regulations to define the allowable legal relationship between contract employees and the contracting departments, agencies and institutions of state government under the jurisdiction of the State Personnel Board, in compliance with the applicable rules and regulations of the federal Internal Revenue Service (IRS) for federal employment tax purposes. Under these regulations, the usual common law rules are applicable to determine and require that such worker is an independent contractor and not an employee, requiring evidence of lawful behavioral control, lawful financial control and lawful relationship of the parties. Any state department, agency or institution shall only be authorized to contract for personnel services in compliance with those regulations.

(6) No member of the Public Procurement Review Board shall use his or her official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities, the contracting for personal or professional services, or the contracting for public construction under this chapter.

(7) Notwithstanding any other laws or rules to the contrary, the provisions of subsection (2) of this section shall not be applicable to the Mississippi State Port Authority at Gulfport.

(8) Nothing in this section shall impair or limit the authority of the Board of Trustees of the Public Employees' Retirement System to enter into any personal or professional services contracts directly related to their constitutional obligation to manage the trust funds, including, but not limited to, actuarial, custodial banks, cash management, investment consultant and investment management contracts.

(9) Notwithstanding the exemption of personal and professional services contracts entered into by the Department of Human Services and personal and professional services contracts entered into by the Department of Child Protection Services from the provisions of this section under subsection (2)(f), before the Department of Human Services or the Department of Child Protection Services may enter into a personal or professional service contract, the department(s) shall give notice of the proposed personal or professional service contract to the Public Procurement Review Board for any recommendations by the board. Upon receipt of the notice, the board shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the board does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may enter the proposed personal or professional service contract. If the board responds to the department(s) within seven (7) calendar days, then the board has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may enter the proposed personal or professional service contract. The board is not authorized to disapprove any proposed personal or professional services contracts. This subsection shall stand repealed on July 1, 2019.

SOURCES: Laws, 1984, ch. 488, § 77; Laws, 1988 Ex Sess, ch. 14, § 69; Laws, 1989, ch. 532, § 55; Laws, 1989, ch. 544, § 13; Laws, 1990, ch. 522, § 3; Laws, 2005, ch. 504, § 2; Laws, 2006, ch. 457, § 1; Laws, 2010, ch. 314, § 1; Laws, 2012, ch. 485, § 1; Laws, 2012, ch. 512, § 1; Laws, 2014, ch. 533, § 1; Laws, 2016, ch. 337, § 1; Laws, 2016, ch. 399, § 1; Laws, 2017, ch. 400, § 13, eff from and after Jan. 1, 2018.

Joint Legislative Committee Note — Section 1 of ch. 512, Laws of 2012, effective July 1, 2012 (approved May 1, 2012), amended this section. Section 1 of ch. 485, Laws of 2012, effective from and after passage (approved April 26, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 512, Laws of 2012, which contains language that specifically provides that it supersedes § 27-104-7 as amended by Laws of 2012, ch. 485.

Section 1 of ch. 337, Laws of 2016, effective from and after passage (approved April 5, 2016), amended this section. Section 1 of ch. 399, Laws of 2016, effective from and after July 1, 2016 (approved April 11, 2016), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 399, Laws of 2016, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Section 1 of Chapter 309, Laws of 2017, amended Section 25-9-120 to add contracts for entertainers and/or performers at the Mississippi State Fairgrounds entered into by the Mississippi Fair Commission to the list of personal and professional services contracts exempt from review by the Personal Services Contract Review Board. Subsequently, Section 14 of Chapter 400, Laws of 2017, amended Section 25-9-120 to abolish the Personal Services Contract Review Board and transferred its powers to the Public Procurement Review Board but did not include the exempt contracts added by Chapter 309. The co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation determined that the omission of the exempt contracts added by Chapter 309 from Chapter 400 is a code error the Joint Legislative Committee can correct in order to effectuate the intent of the Legislature in enacting Chapter 309. The Committee ratified the addition of the entertainer/performer contracts to the exempted contracts listed in Section 27-104-7(2)(f) at the August 15, 2017, meeting of the committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in (2)(o)(iii) by substituting "paragraph (f) of this subsection and subsection (8)" for "Section 27-104-7(2)(f) and (8)." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Amendment Notes — The first 2016 amendment (ch. 337), in (2)(c), in the first sentence, inserted "desired" preceding "deadline date" and inserted "of the Department of Finance and Administration" near the end, and added the last sentence; and made a minor stylistic change.

The second 2016 amendment (ch. 399), in (2), added "as well as related contracts for architectural and engineering services" at the end of (b), and in (c), inserted "of the Department of Finance and Administration" in the next-to-last sentence and added the last sentence.

The 2017 amendment, effective January 1, 2018, rewrote the former first sentence of (1), which read: "There is created within the Department of Finance and Administration the Public Procurement Review Board, which shall be composed of the Executive Director of the Department of Finance and Administration, the head of the Office of Budget and Policy Development and an employee of the Office of General Services who is familiar with the purchasing laws of this state" and redesignated it (1)(a); added (1)(a)(i) through (iii), and (b) through (d); rewrote the former second through ninth sentences of (1), which read: "The Executive Director of the Department of Finance and Administration shall be chairman and shall preside over the meetings of the board. The board shall annually elect a vice chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Two (2) members shall be a quorum. No action shall be valid unless approved by the chairman and one (1) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. The board shall meet on a monthly basis and at any other time when notified by the chairman. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office" and redesignated them (1)(e); added (2)(f) through (p), (3) through (5) and (8) and (9), and redesignated former (3) and (4) as (6) and (7); and made minor stylistic and gender neutral changes throughout.

Cross References — Affect of a member of any board, commission, council or authority changing domicile, see § 7-13-9.

State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

Department of Finance and Administration, see § 27-104-101.

Contractual powers of the board, generally, see § 31-9-5.

Duties of the Public Procurement Review Board with respect to the leasing of prison agricultural lands, see § 47-5-66.

Requirement that the award of all contracts in excess of $500,000.00 entered into by the commissioner of corrections be approved by the public procurement review board, see § 47-5-105.

Duty of review board to review leases between Department of Corrections and nonprofit corporation formed to manage prison industries, see § 47-5-569.

RESEARCH REFERENCES

ALR. Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

§ 27-104-8. Repealed.

Repealed by Laws of 2017, ch. 402, § 2, effective from and after July 1, 2017.

§ 27-104-8. [Laws, 1994, ch. 626, § 7, eff from and after July 1, 1994.]

Editor's Note — Former § 27-104-8 established the Commission on Public Procurement Codes.

§ 27-104-9. Submission of agency operating budget.

After appropriations have been passed into law, but prior to the start of the fiscal year, agencies shall submit to the State Fiscal Officer an operating budget in a format specified by him. The State Fiscal Officer, acting through the Bureau of Budget and Fiscal Management, shall review the operating budgets to insure they are in compliance with the appropriation and return them to the agencies. A copy of the approved operating budget shall be used for authorizing the expenditure of funds appropriated through the allotment process.

SOURCES: Laws, 1984, ch. 488, § 78; Laws, 1989, ch. 532, § 56, eff from and after July 1, 1989.

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional powers and duties of Executive Director of the Department of Finance and Administration, see § 7-7-1 et seq.

Definitions of terms used in Sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-11. Expenditures by agency.

No general or special funds received under state law, except those for the legislature, or those made available for a special or particular purpose with the intention that they shall or may be expended immediately, shall be available for expenditure by the agency entitled thereto until estimates of the amount required for the agency shall have been submitted to and approved by the state fiscal officer, with copies of such estimates to be furnished to the legislative budget office.

SOURCES: Laws, 1984, ch. 488, § 79, eff from and after July 1, 1984.

Editor's Note — Section 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Definitions of terms used in Sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-13. Revision of budget estimates for and reduction of funding allocations to general-fund and special-fund agencies and for "administration and other expenses" budget of Mississippi Department of Transportation; general fund revenue estimate to be adopted by Legislative Budget Office by sine die adjournment; transfers to General Fund.

(1) The State Fiscal Officer may disapprove or reduce and revise the estimates of general funds and state-source special funds for any general fund or special fund agency and for the "administration and other expenses" budget of the Mississippi Department of Transportation, in an amount not to exceed five percent (5%), if at any time he finds that funds will not be available within the period for which the budget is drawn, or if at any time he finds that the requested expenditures, or any part thereof, are not authorized by law, and that action shall be reported to the Legislative Budget Office.

The State Fiscal Officer may, upon his determination of need based upon a finding that funds will not be available within the period for which the budget is drawn, transfer funds as provided in Section 27-103-203, from the Working Cash-Stabilization Reserve Fund to the General Fund to supplement the general fund revenue.

If the estimates of general funds and state-source special funds of all general fund and special fund agencies and of the "administration and other expenses" budget of the Mississippi Department of Transportation have been reduced by five percent (5%), additional reductions may be made, but shall consist of a uniform percentage reduction of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation.

Any state-source special funds reduced under the provisions of this subsection (1) shall be transferred to the State General Fund upon requisitions for warrants signed by the respective agency head, and the transfer shall be made within a reasonable period to be determined by the State Fiscal Officer.

The provisions of this subsection (1) authorizing the State Fiscal Officer to disapprove or reduce and revise the estimates of general funds and state-source special funds for the "administration and other expenses" budget of the Mississippi Department of Transportation shall be suspended during the period from June 30, 2009, through June 30, 2010.

(2) The Department of Revenue and University Research Center, utilizing all available revenue forecast data, shall annually develop a general fund revenue estimate to be adopted by the Joint Legislative Budget Committee as of the date of sine die adjournment. If, at the end of October, or at the end of any month thereafter of any fiscal year, the revenues received for the fiscal year fall below ninety-eight percent (98%) of the general fund revenue estimate adopted by the Joint Legislative Budget Committee at the date of sine die adjournment, the State Fiscal Officer shall reduce allocations of general funds and state-source special funds to general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation, in an amount necessary to keep expenditures within the sum of actual general fund receipts, including any transfers to the General Fund from the Working Cash-Stabilization Reserve Fund for the fiscal year.

The State Fiscal Officer may, upon his determination of need based on the revenue shortfall, transfer funds as provided in Section 27-103-203 from the Working Cash-Stabilization Reserve Fund to the General Fund to supplement the general fund revenue. State-source special funds in an amount equal to any reduction made under the provisions of this subsection (2) shall be transferred to the State General Fund upon requisitions for warrants signed by the respective agency head, and the transfer shall be made within a reasonable period to be determined by the State Fiscal Officer.

No agency's allocation shall be reduced in an amount to exceed five percent (5%); however, if the allocations of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation have been reduced by five percent (5%), any additional reductions required to be made under this subsection (2) shall consist of a uniform percentage reduction of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the

Mississippi Department of Transportation. Any receipt from loans authorized by Sections 31-17-101 through 31-17-123 shall not be included as revenue receipts.

The State Fiscal Officer shall immediately send notice of any action taken under authority of this subsection (2) to the Legislative Budget Office.

The provisions of this subsection (2) requiring the State Fiscal Officer to reduce allocations of general funds and state-source special funds to general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation shall be suspended during the period from June 30, 2009, through June 30, 2010.

(3) For the purpose of this section, the term "state-source special funds" means any special funds in any agency derived from any source, but shall not include the following special funds: special funds derived from federal sources, from local or regional political subdivisions, from agricultural commodity assessments, or from donations; special funds derived from additional fees paid for the issuance of distinctive motor vehicle license tags or plates authorized under the provisions of Chapter 19, Title 27, Mississippi Code of 1972; special funds held in a fiduciary capacity for the benefit of specific persons or classes of persons; special funds of the Mississippi Veterans Affairs Board that are paid to the board by the veteran residents of state veterans homes to fund their monthly expenses at the state veterans homes; self-generated special funds of the state institutions of higher learning or the state community or junior colleges; special funds of Mississippi Industries for the Blind, the State Port at Gulfport, Yellow Creek Inland Port, Pat Harrison Waterway District, Pearl River Basin Development District, Pearl River Valley Water Management District, Tombigbee River Valley Water Management District, Yellow Creek Watershed Authority, or Coast Coliseum Commission; special funds of the Department of Wildlife, Fisheries and Parks and the Department of Marine Resources derived from the issuance of hunting or fishing licenses; and special funds generated by agencies whose primary function includes the establishment of standards and the issuance of licenses for the practice of a profession within the State of Mississippi.

SOURCES: Laws, 1984, ch. 488, § 80; Laws, 1986, ch. 480, § 2; Laws, 1989, ch. 532, § 57; Laws, 1992, ch. 484 § 9; Laws, 2005, ch. 440, § 1; Laws, 2005, 5th Ex Sess, ch. 12, § 2; Laws, 2009, 2nd Ex Sess, ch. 126, § 6; Laws, 2011, ch. 329, § 1; Laws, 2011, ch. 504, § 1; Laws, 2017, 1st Ex Sess, ch. 6, § 5, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of ch. 329, Laws of 2011, effective from and after July 1, 2011 (approved March 9, 2011), amended this section. Section 1 of ch. 504, Laws of 2011, effective from and after July 1, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at its July 13, 2011, meeting.

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Laws of 2010, ch. 321, § 1 provides:

"SECTION 1. (1) For the purpose of providing funds to restore a portion of the reductions in allocations of funds to the agencies listed in subsection (2) of this section made by the State Fiscal Officer under Section 27-104-13 during fiscal year 2010, the State Fiscal Officer shall transfer to the Budget Contingency Fund during fiscal year 2010, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
Health Care Expendable Fund	3989	$58,000,000.00
Public Service Commission	3811	5,000,000.00
Department of Education — Mississippi Adequate Education Program	2230	5,000,000.00
Governor's Office — Division of Medicaid	2328	14,000,000.00
TOTAL		$82,000,000.00

"(2) From the funds transferred to the Budget Contingency Fund under subsection (1) of this section, the State Fiscal Officer shall transfer the following specified sums to the agencies listed below:

Agency	*Amount*
District attorneys and staff	$ 1,491,817.00
State Tax Commission	1,000,000.00
Education, Department of: National Board Certification	2,036,095.00
Education, Department of: Chickasaw Cession counties	1,126,768.00
Education, Department of: Mississippi Adequate Education Program	33,908,173.00
IHL — Ayers funding	2,248,369.00
IHL — University of Mississippi Medical Center	750,000.00
IHL — ASU — Agricultural programs	139,384.00
IHL — MSU — Agricultural and Forestry Experiment Station	267,778.00
IHL — MSU — Cooperative Extension Service	267,777.00
IHL — MSU — Veterinary Medicine, College of	385,784.00
Health, State Department of	875,000.00
Mental Health, Department of	4,000,000.00
Corrections, Department of	16,000,000.00
Human Services, Department of	2,500,000.00
Rehabilitation Services, Department of	200,000.00
Military Department	61,856.00
Public Safety, Department of: Crime Laboratory	45,421.00
Public Safety, Department of: Highway Safety Patrol Division	1,765,198.00
Public Safety, Department of: Bureau of Narcotics	69,947.00

Veterans' Affairs Board	1,173,727.00
Department of Finance and Administration:	
Property insurance	7,100,000.00
Department of Finance and Administration:	
Cost allocation due federal government	3,300,000.00
Attorney General:	
Judgments and settlements	1,286,906.00
TOTAL	$ 82,000,000.00

"(3) The agencies listed in subsection (2) of this section are authorized to escalate their budgets by the respective amounts specified for each agency and expend those sums for the purposes authorized by law, subject to the following provision:

"The Department of Public Safety shall not be authorized to transfer any funds from the budgets of the Crime Laboratory, Highway Safety Patrol Division and the Bureau of Narcotics to any other budget of the department."

Laws of 2017, ch. 6, 1st Extraordinary Session, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Financial and Operational Responses That Invigorate Future Years Act (FORTIFY Act).'"

Amendment Notes — The 2017 amendment, in (2), substituted references to "Joint Legislative Budget Committee" for "Legislative Budget Office" in the first and second sentences.

Cross References — Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Definitions of terms used in Sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

Transfer of money from the Working Cash-Stabilization Reserve Fund to cover year-end shortfalls in the State General Fund, see § 27-103-203.

Mississippi Industries for the Blind, see § 43-3-101 et seq.

Urban renewal and redevelopment, generally, see § 43-35-1 et seq.

Pearl River Basin Development district, see § 51-11-1 et seq.

Tombigbee River Valley Water Management District, see § 51-13-101 et seq.

Pat Harrison Waterway District, see § 51-15-101 et seq.

Yellow Creek Watershed Authority, see § 51-25-2 et seq.

Mississippi Coast Coliseum Commission, see § 55-24-1 et seq.

ATTORNEY GENERAL OPINIONS

Monies appropriated from the Health Care Expendable Fund to a state agency may not be transferred to the general fund under existing law since the proceeds of the settlement of a certain lawsuit brought against tobacco companies by the state are to be held by the state in a fiduciary capacity for the benefit of the health care of the citizens of the state and monies in the expendable fund can only be spent for health care purposes. Moody, Feb. 15, 2001, A.G. Op. #2001-0120.

§ 27-104-14. Rescission or restoration of reductions or revisions of estimates or allocations of general funds.

The Governor or the Department of Finance and Administration shall not rescind or restore any reductions or revisions of estimates or allocations of general funds or state-source special funds made by the Governor or the Department of Finance and Administration under the provisions of Section 27-104-13 or Section 31-17-123 during fiscal year 2011 or any fiscal year thereafter.

SOURCES: Laws, 2003, ch. 556, § 5; Laws, 2009, ch. 563, § 16, eff from and after passage (approved May 13, 2009.)

Editor's Note — Laws of 2003, ch. 556, § 4, as amended by Laws of 2004, ch. 595, § 10, and as amended by Laws of 2005, 2nd Ex Sess, ch. 2, § 5, provides:

"SECTION 4. (1) There is created in the State Treasury a special fund to be known as the Special Funds Transfer Fund, which shall be comprised of the monies required to be deposited into the fund under Section 27-65-75(18) for the repayment of certain funds transferred to the Budget Contingency Fund. Upon receipt of monies deposited into the fund under Section 27-65-75(18), the State Treasurer shall transfer those monies to the special funds from which transfers were made under Sections 2 and 3 of Chapter 556, Laws of 2003.

"(2) Unexpended amounts remaining in the fund on September 30, 2008, shall lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund."

Cross References — Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-15. Hearings as to revision of agency budget estimates.

If the State Fiscal Officer shall so delay approval of the estimate for any agency, or if they shall so reduce and revise the estimate of any agency, in a manner which in the judgment of the executive head of such agency jeopardizes the effectiveness and efficient operation of said agency, a hearing shall be afforded by the State Fiscal Officer to the executive head of any such agency. The Legislative Budget Committee shall be notified of such hearings and the committee or its members may attend such hearings in order to give it adequate information on which to base any recommendations it may desire to submit to the Legislature.

SOURCES: Laws, 1984, ch. 488, § 81; Laws, 1989, ch. 532, § 58, eff from and after July 1, 1989.

Editor's Note — Section 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Definitions of terms used in Sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-17. Allotment period; time for filing of budget estimates; restriction of agency expenditures; special reserve funds; emergency measures; prior approval required to hire certain retired employees under contract.

(1) An allotment period shall be one-half (½) of twelve (12) months, and expenditure one-half (½) of the appropriated amount, unless otherwise specified in the appropriation bill or justified by the agency to the Department of Finance and Administration, and the first allotment period shall commence on July 1. Estimates shall be filed with the Department of Finance and Administration not later than the first day of the month preceding the beginning period.

The Department of Finance and Administration may, in its discretion, restrict an agency to a monthly allotment period when it becomes evident that an agency's rate of expenditure to date indicates this restriction will be necessary to prevent depletion of its appropriation prior to the close of the fiscal year or when the condition of the State General Fund requires monthly monitoring and control of the rate of General Fund expenditures.

(2) Unless otherwise specified in the agency appropriation bill, in the event any emergency or unforeseen circumstances shall arise, the agency head may authorize increases in major objects of expenditure within each specific budget within each appropriation bill in total amounts not to exceed ten percent (10%) of the appropriated amount of each object, provided that other major objects of expenditure are decreased by a corresponding dollar amount. Except as otherwise authorized in Section 7-5-39, no transfers shall be authorized which increase or decrease the major object of expenditure "Salaries, Wages and Fringe Benefits," or which increase the major object of expenditure "Capital Outlay — Equipment." The agency head shall submit written justification for the transfer to the Legislative Budget Office, the Department of Finance and Administration, and the State Auditor, on or before the fifteenth of the month prior to the effective date of the transfer. The transfer shall be effective the first working day of the month following timely submissions required herein. In cases of extreme hardship, certified in writing by the agency head and submitted with timely submissions required herein, the Executive Director of the Department of Finance and Administration, in his discretion, may authorize an earlier effective date for the transfer.

(3) No former employee who is receiving State of Mississippi retirement benefits shall be hired under contract for an amount exceeding Twenty Thousand Dollars ($20,000.00) a year without prior approval by an agency's proper governing board or authority. Upon approval of such contracts a written report shall be submitted detailing the cost and need of such contract services to the Chairmen and members of the Senate and House Appropriations Committees.

SOURCES: Laws, 1984, ch. 488, § 82; Laws, 1985, ch. 525, § 4; Laws, 1989, ch. 532, § 59; Laws, 1989, ch. 544, § 18; Laws, 1991, ch. 603, § 1; Laws, 1992, ch.

484 § 14; Laws, 1996, ch. 308, § 1; Laws, 2005, 5th Ex Sess, ch. 19, § 1; Laws, 2009, ch. 329, § 1; Laws, 2012, ch. 546, § 11, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation inserted the word "a" before "monthly allotment period" in the second paragraph of subsection (1). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Section 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Definitions of terms used in Sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-19. Availability of funds after approval of operating budget.

Except as otherwise authorized in Section 7-5-39, when an operating budget has been approved, the amount approved shall be available and shall constitute the maximum of obligations or indebtedness which may be incurred by the agency for any purpose during the allotment period to be paid from such funds.

SOURCES: Laws, 1984, ch. 488, § 83; Laws, 2012, ch. 546, § 12, eff from and after July 1, 2012.

Cross References — Definitions of terms used in sections 27-104-1 through 27-104-27, see 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-21. Application for federal funds; expenditure of funds; use of revenue generated from Statewide Cost Allocation Fund; excess funds transferred to State General Fund.

(1) All general and special fund agencies shall, upon making application for federal funds, forward a summary of such applications to the Legislative Budget Office. The Legislative Budget Office shall have an opportunity to review such applications and make its comments thereon to the Executive Director of the Department of Finance and Administration and the state agency making application. Unless otherwise specified in the appropriation bill, the Executive Director of the Department of Finance and Administration

shall have the authority to approve escalations in a budget using one hundred percent (100%) federal money.

(2) New employee positions funded one hundred percent (100%) by or from federal funds may be authorized by the Executive Director of the Department of Finance and Administration subject to the rules and regulations of the State Personnel Board. No federal funds may be expended for programs or activities other than those which have been authorized by act of the Legislature or which are encompassed by a state agency's program structure as provided by law. The Executive Director of the Department of Finance and Administration shall immediately send notice of the approval of such budget escalation to the Legislative Budget Office. The Executive Director of the Department of Finance and Administration shall ensure that the Legislative Budget Office receives timely, detailed and accurate information about the amount and use of federal funds by state agencies.

(3) The Department of Finance and Administration shall require, by rule and regulation, that each agency receiving federal funds shall apply for federal reimbursement for state central services costs in accordance with Office of Management and Budget Circular A-21 or A-87, which reimbursement shall be deposited directly into the Statewide Cost Allocation Fund, which is hereby established within the State Treasury. An agency's failure to timely apply for such reimbursement shall be condition sufficient to authorize the Department of Finance and Administration to transfer an amount equal to not less than fifty percent (50%) nor more than one hundred percent (100%) of the total amount designated to such agency in the applicable fixed cost agreement of the state central service cost allocation plan. These funds shall be transferred from any available funds within such agency into the Statewide Cost Allocation Fund upon execution of a requisition for issuance of warrant by the Executive Director of the Department of Finance and Administration. Any funds on hand in said Statewide Cost Allocation Fund at the end of the fiscal year shall lapse into the State General Fund. From and after July 1, 2016, any revenue generated from this fund shall be used only for the maintenance, upkeep and utility costs of state-owned property, and any amount on hand at the end of the fiscal year that is not necessary to defray the cost of such maintenance, upkeep and utility costs shall, after August 15 of each year, be transferred to the State General Fund as authorized by law and as determined by the State Fiscal Officer.

SOURCES: Laws, 1984, ch. 488, § 84; Laws, 1985, ch. 525, § 5; Laws, 1989, ch. 532, § 60; Laws, 1990, ch. 574, § 2; Laws, 2005, 5th Ex Sess, ch. 19, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 16, eff from and after passage (approved June 23, 2017.)

Amendment Notes — The 2017 amendment, effective June 23, 2017, added the last sentence of (3).

Cross References — Additional powers and duties of Executive Director of the Department of Finance and Administration, see § 7-7-1 et seq.

Definitions of terms used in Sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

State agencies receiving and expending funds under Disaster Assistance Act of 1993 shall request Department of Finance and Administration for escalation of budget in same manner as department escalates budgets for federal funds under this section, see § 33-15-311.

§ 27-104-23. Records and accounts; reports.

The State Auditor and from and after July 1, 1986, the State Fiscal Officer, shall maintain his records and accounts in such a manner that, insofar as funds paid from the State Treasury are concerned, only the amounts approved by the State Fiscal Officer or authorized in the agency appropriation bill shall be available for expenditure during any allotment period by the state agency entitled thereto. The State Auditor, or the State Fiscal Officer, as the case may be, shall be liable on his official bond for any failure on his part to fully comply with the provisions of this section.

It shall be the duty of any officer or employee of any state agency who is clothed with the authority to make purchases or obligations or incur expenses to keep records of such purchases, obligations, or expenses incurred by him, and such purchases, obligations, or expenses incurred shall be entered upon the records the day they are made. No such purchases, obligations, or expenses shall be incurred after June 30 of the then fiscal year which would encumber funds appropriated for the fiscal year just ending. It shall be the duty of each agency coming within the purview of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 to submit, on or before July 15, a statement on a form prepared and furnished by the State Fiscal Officer, showing a detailed list of all encumbrances outstanding as of the close of the preceding fiscal year, together with purchase order numbers and such other information as the State Fiscal Officer may require.

SOURCES: Laws, 1984, ch. 488, § 85; Laws, 1989, ch. 532, § 61, eff from and after July 1, 1989.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional powers and duties of Executive Director of the Department of Finance and Administration, see § 7-7-1 et seq.

Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Preservation of accounts and records, see § 7-7-63.

Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-25. Responsibility for obligations or indebtedness incurred in name of agency; limitations on obligations or indebtedness; payment of claims from prior fiscal year.

(1) The executive head and business manager of each state agency shall be responsible for all obligations or indebtedness incurred in the name of the agency, or by any employee for them when incurred by such employee acting within the scope of his employment.

(2) No obligations or indebtedness shall be incurred by any such person during any allotment period in excess of the amount of the estimate approved by the Department of Finance and Administration or in the agency appropriation bill.

If a claim arising from orders for goods or services from the prior fiscal year is presented within one (1) year and (a) the payment of a claim does not cause an agency to exceed the amount of its prior year budget estimate as approved by the Department of Finance and Administration or its appropriation bill, and (b) sufficient funds remain in the current fiscal year's allotment to pay the claim, the State Treasurer, upon approval of the claim by the Department of Finance and Administration, shall draw a warrant in payment of the claim.

(3) Contractual obligations, such as salary contracts, shall be considered as incurred within the fiscal period in which they are to be paid, and are to be encumbered against funds to be available in that fiscal period, and shall include appropriate cancellation clauses in the event the anticipated revenues from which they are to be paid do not become available.

(4) Agencies having special funds, as defined in Section 27-103-103, shall not incur obligations or indebtedness against such special funds in an amount in excess of revenues actually anticipated and budgeted.

(5) If obligations or indebtedness shall be incurred contrary to the provisions hereof, then neither the State of Mississippi nor the agency shall have any liability therefor, and the person, firm or corporation to whom the obligation or indebtedness is due may recover the amount of the obligation or indebtedness and twenty-five percent (25%) of the amount as liquidated damages from the responsible officers, either personally or upon their official bonds, either severally or jointly.

SOURCES: Laws, 1984, ch. 488, § 86; Laws, 1991, ch. 603, § 2, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (5). The words "severally of" were changed to "severally or." The Joint Committee ratified the correction at its December 3, 1996 meeting.

Cross References — Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

ATTORNEY GENERAL OPINIONS

Claims for payment of airport joint use fees by the Mississippi National Guard to the Meridian Airport Authority in prior years, beginning October 1, 1990 and ending September 30, 1992, were beyond the one year period of limitation allowed for the claims and, without any legislative action specifically authorizing payment, were not allowable. Pearson, December 9, 1993, A.G. Op. #98-0015.

Only claims from prior fiscal years which are presented within one year after goods or services are provided may be paid by an agency, and this also applies to an agency authorized to make lump sum withdrawals from the State Treasury; thus, without specific legislative authorization, the University of Mississippi Medical Center cannot pay claims to the City of Jackson for sewer services which were provided more than one year before presentation of claims. Conerly, January 30, 1998, A.G. Op. #98-0025.

§ 27-104-27. Application of provisions to funds granted or allotted under act of Congress; exemption of agency; exceptions.

Notwithstanding anything in Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 contained, the same shall not be construed to apply to any agency supported wholly by funds granted or allotted under any Act of Congress. The State Auditor of Public Accounts and after July 1, 1986, the State Fiscal Officer shall determine which special fund accounts in the State Treasury require an appropriation act and request an appropriation for such special fund accounts. For all other special fund accounts, the State Auditor of Public Accounts, or the State Fiscal Officer after July 1, 1986, shall certify that such accounts do not require an appropriation. The Legislative Budget Office shall recommend an appropriation for each special fund account existing in the State Treasury so certified as requiring an appropriation, unless exempted as hereinafter provided. In the event the Legislative Budget Committee and the State Fiscal Officer find that any state agency should not be included under the provisions of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29, then the such committee and officer may, in their discretion, exempt such state agency from the provisions thereof. Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 shall not apply to funds collected and disbursed by a state agency created and existing under the provisions of Sections 73-3-101 through 73-3-169. Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 shall not apply to funds deposited into the special fund created pursuant to Section 45-9-101, the special fund created pursuant to Section 69-37-39, the special fund created pursuant to Section 1 of Chapter 521, Laws of 1999, the special fund created pursuant to Section 31-17-127, the special fund created pursuant to Section 65-1-110, the special fund created pursuant to Section 27-7-22.31, or the special fund created pursuant to Sections 1 and 2 of Chapter 863, Local and Private Laws of 1987.

The State Fiscal Officer shall not promulgate or attempt to enforce any rule, order or regulation which is not in accordance with the provisions of a legally executed trust indenture agreement, nor shall Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 be construed to apply to funds collected and disbursed by a state agency under Sections 65-33-45 and 65-33-47.

SOURCES: Laws, 1984, ch. 488, § 87; Laws, 1985, ch. 525, § 6; Laws, 1989, ch. 532, § 62; Laws, 1991, ch. 609, § 3; Laws, 1998, ch. 584, § 3; Laws, 1999, ch. 521, § 2; Laws, 1999, ch. 575, § 2; Laws, 2002, ch. 544, § 2; Laws, 2006, ch. 420, § 2; Laws, 2016, ch. 489, § 5, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 2 of ch. 521 Laws of 1999, effective from and after July 1, 1999, amended this section. Section 2 of ch. 575, Laws of 1999, effective from and after its passage (approved April 21, 1999), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 521, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The words "Section 1 of House Bill No. 1668, 1999 Regular Session" were changed to "Section 1 of Chapter 521, Laws of 1999." The Joint Committee ratified the correction at its June 29, 2000 meeting.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 73-3-169, referred to in the sixth sentence of the first paragraph, was repealed by Laws of 1974, ch. 566, § 29 effective from and after July 1, 1974.

Laws of 2002, chs. 544 and 546 were identical. Senate Bill No. 2133, 2002 Regular Session, was signed by the Governor twice, and the office of the Secretary of State assigned ch. 544 to the version with the Governor's first signature and ch. 546 to the version with the Governor's second signature. Chapter 546 has not been used at the direction of Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Amendment Notes — The 2016 amendment added "or the special fund created pursuant to Sections 1 and 2 of Chapter 863, Local and Private Laws of 1987" at the end of the first paragraph; and made minor stylistic changes.

Cross References — Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Definitions of terms used in sections 27-104-1 through 27-104-27, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-29. Injunctive action by attorney general.

(1) The Legislative Budget Office or the State Fiscal Officer may request and the Attorney General is authorized, upon receipt of such request, to bring an injunctive action against any special-fund agency failing to comply with the

terms of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29.

(2) Such injunctive action by the Attorney General may be either a mandatory injunction to force the filing of the required budget or a prohibitory injunction to prevent the special-fund agency from engaging in further business or other activities until such time as the terms of Sections 27-103-101 through 27-103-139 and 27-104-1 through 27-104-29 have been complied with.

SOURCES: Laws, 1984, ch. 488, § 88; Laws, 1989, ch. 532, § 63, eff from and after July 1, 1989.

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Joint legislative budget committee and legislative budget office, generally, see § 27-103-101 et seq.

Definitions of "general-fund" agencies and "special-fund" agencies, see § 27-103-103.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

§ 27-104-31. Powers and duties of Executive Director of the Department of Finance and Administration acting through insurance division.

(1) The State Fiscal Officer shall have the following powers and duties, acting through the Insurance Division:

(a) To implement and administer a comprehensive risk management program for all state agencies including, but not limited to, the areas of liability insurance and workers' compensation insurance;

(b) To coordinate and administer the Employment Compensation Revolving Fund for state agencies as directed in Section 71-5-359;

(c) To coordinate and administer the liability plans authorized in Section 11-46-17;

(d) To coordinate and administer the workers' compensation plan for state agencies as a self-insured program and to determine the feasibility of other self-insured programs for state agencies;

(e) To require of state agencies premium payments or contributions to self-insurance funds, or both, necessary to meet the obligations created by the comprehensive risk management program. Such self-insurance fund created shall be maintained as separate special funds in the State Treasury or in authorized bank accounts. Such funds as required shall be used to pay claims under the workers' compensation self-insurance fund. All such funds shall be exempt from the appropriation process. All interest earned from the investment of monies in the funds shall be credited to the appropriate special fund. Monies remaining in such special funds at the end of the fiscal year shall not lapse into the State General Fund;

(f) To promulgate and adopt rules and regulations necessary to effect the provisions of a comprehensive risk management program;

(g) To pay such administrative costs necessary to insure the successful operation of each program administered by the insurance division. Such administrative costs shall include the operating expenses of the division. Each program shall be assessed their proportionate share of those operating expenses; and

(h) To provide administrative support to the board as defined in Section 25-15-3.

(2) The State Fiscal Officer shall not have the power or authority to request that bonds be issued or any funds borrowed in order to implement a comprehensive risk management program or plan of self-insurance for the state, or any of its political subdivisions, or to contribute to the Tort Claims Fund.

SOURCES: Laws, 1988, ch. 479, § 1; Laws, 1989, ch. 532, § 64; Laws, 1991, ch. 505 § 1; Laws, 1993, ch. 392, § 1; Laws, 1994, ch. 615, § 8; Laws, 1999, ch. 511, § 9; Laws, 2010, ch. 504, § 6, eff from and after passage (approved Apr. 8, 2010.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in subsections (1)(f) and (1)(g). The word "and" was deleted from the end of paragraph (1)(f) and was added to the end of (1)(g), following the semicolon. The Joint Committee ratified the correction at its April 26, 2001, meeting.

Editor's Note — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional powers and duties of Executive Director of The Department of Finance and Administration, see § 7-7-1 et seq.

Tort Claims Fund established in § 11-46-17.

ATTORNEY GENERAL OPINIONS

Self-insured health plans of state of Mississippi are responsibility of state and such liability cannot be transferred to provider organizations. Ranck, Jan. 24, 1994, A.G. Op. #93-0921.

§ 27-104-33. Payment by credit card, charge card, debit card, or other form of electronic payment of amounts owed to state agencies.

The State Department of Finance and Administration shall establish policies that allow the payment of various fees and other accounts receivable to state agencies, and the payment for retail merchandise sold by state agencies, by credit cards, charge cards, debit cards and other forms of electronic payment in the discretion of the department. Any fees or charges associated with the use of such electronic payments shall be assessed to the user of the electronic payment as an additional charge for processing the electronic payment, so that the user will pay the full cost of using the electronic payment.

Agencies, with the approval of the Department of Finance and Administration, may bear the full cost of processing such electronic payments if the agency can demonstrate to the department's satisfaction that they are able to assume these costs and provide the related service for the same or lesser cost. However, state agencies may bear the full cost of processing such electronic payments for retail merchandise sold by state agencies.

SOURCES: Laws, 2001, ch. 511, § 1; Laws, 2005, ch. 526, § 1; Laws, 2013, ch. 441, § 2, eff from and after passage (approved March 25, 2013.)

REVENUE MAXIMIZATION CONTRACTS

SEC.
27-104-81. Revenue maximization contracts; indemnification provision required.

§ 27-104-81. Revenue maximization contracts; indemnification provision required.

(1) For the purpose of this section:

(a) "Agency" means any agency, department, institution or officer of the State of Mississippi.

(b) "Revenue maximization contract" means a contract or other agreement between an agency and a person or entity under which the person or entity will seek to maximize federal funds for the use of the agency.

(2) If an agency enters into a revenue maximization contract with a person or entity after June 30, 2001, the contract must contain an indemnification provision that holds the person or entity liable to the state for reimbursement of the amount of federal funds that the state may be required to repay to the federal government as a result of any actions taken under the contract by the person or entity on behalf of the agency, or any actions taken by the agency as recommended by the person or entity, up to the amount that the person or entity received from the agency under the contract.

(3) If a revenue maximization contract entered into after June 30, 2001, does not contain the indemnification provision required by subsection (2) of this section, the indemnification requirement of subsection (2) shall be considered to be part of the contract by operation of law.

SOURCES: Laws, 2001, ch. 369, § 1; Laws, 2003, ch. 334, § 1, eff from and after passage (approved Mar. 7, 2003.)

DEPARTMENT OF FINANCE AND ADMINISTRATION

SEC.
27-104-101. Creation and organization of Department of Finance and Administration; executive director; office heads.
27-104-103. Duties and powers of department; funding of agency expenses; deposit of monies into State General Fund.
27-104-105. Prior clearance by Attorney General and State Personnel Board or

authorization under Section 7-5-39 required for payment of certain claims for legal services; exceptions.
27-104-107. Lease, sublease, or lease-purchase of real property by Department of Finance and Administration.
27-104-109. Department to create report of Mississippi-based companies that manufacture products using recycled materials; contents of report.

§ 27-104-101. Creation and organization of Department of Finance and Administration; executive director; office heads.

(1) There is hereby created the Mississippi Department of Finance and Administration, whose offices shall be located in Jackson, Mississippi.

(2) The department shall be headed by an executive director, who shall be appointed by and serve at the pleasure of the Governor. The appointment of the executive director shall be made with the advice and consent of the Senate. The executive director may assign to deputy directors such powers and duties as deemed appropriate to carry out the department's lawful functions.

(3) The executive director of the department shall appoint officers, who shall serve at the pleasure of the executive director. The executive director shall have the authority to organize the department as deemed appropriate to carry out the responsibilities of the department. The organization charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

SOURCES: Laws, 1989, ch. 544, § 11; Laws, 1990, ch. 522, § 4; Laws, 1993, ch. 485, § 1, eff from and after passage (approved March 27, 1993).

Cross References — Salary and powers and duties of Executive Director, see § 27-104-5.

Transfer of certain powers of Adjutant General concerning nonmilitary aircraft to Department, see § 61-13-21.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

ATTORNEY GENERAL OPINIONS

Without specific authority, the Executive Director of the Department of Finance and Administration cannot designate his Deputy Director to perform duties statutorily mandated to be performed by the Executive Director. Anderson, Oct. 6, 2000, A.G. Op. #2000-0577.

§ 27-104-103. Duties and powers of department; funding of agency expenses; deposit of monies into State General Fund.

(1) The Department of Finance and Administration shall have the following duties and powers:

(a) To provide administrative guidance to the various departments and agencies of state government;

(b) To facilitate the expedient delivery of services and programs for the benefit of the citizens of the state;

(c) To analyze and develop efficient management practices and assist departments and agencies in implementing effective and efficient work management systems;

(d) To conduct management review of state agencies and departments and recommend a management plan to state departments and agencies when corrective action is required;

(e) To, at least annually, report to the Governor and the Legislature on programs and actions taken to improve the conduct of state operations and to prepare and recommend management programs for effective and efficient management of the operations of state government;

(f) To allocate the federal-state programs funds to the departments responsible for the delivery of the programs and services for which the appropriation was made;

(g) To coordinate the planning functions of all agencies in the executive branch of government and review any and all plans which are developed by those agencies and departments;

(h) To collect and maintain the necessary data on which to base budget and policy development issues;

(i) To develop and analyze policy recommendations to the Governor;

(j) To develop and manage the executive budget process;

(k) To prepare the executive branch budget recommendations;

(*l*) To review and monitor the expenditures of the executive agencies and departments of government;

(m) To manage the state's fiscal affairs;

(n) To administer programs relating to general services, public procurement, insurance and the Bond Advisory Division;

(o) To administer the state's aircraft operation.

(2) The department shall have the following additional powers and duties under Chapter 18 of Title 17:

(a) It shall acquire the site submitted by the Mississippi Hazardous Waste Facility Siting Authority and, if determined necessary, design, finance, construct and operate a state commercial hazardous waste management facility;

(b) It may acquire by deed, purchase, lease, contract, gift, devise or otherwise any real or personal property, structures, rights-of-way, franchises, easements and other interest in land which is necessary and convenient for the construction or operation of the state commercial hazardous waste management facility, upon such terms and conditions as it deems advisable, hold, mortgage, pledge or otherwise encumber the same, and lease, sell, convey or otherwise dispose of the same in such a manner as may be necessary or advisable to carry out the purposes of Chapter 18 of Title 17;

(c) It shall develop and implement, in consultation with the Department of Environmental Quality, schedules of user fees, franchise fees and other charges, including nonregulatory penalties and surcharges applicable to the state commercial hazardous waste management facility;

(d) It may employ consultants and contractors to provide services including site acquisition, design, construction, operation, closure, post-closure and perpetual care of the state commercial hazardous waste management facility;

(e) It may apply for and accept loans, grants and gifts from any federal or state agency or any political subdivision or any private or public organization;

(f) It shall make plans, surveys, studies and investigations as may be necessary or desirable with respect to the acquisition, development and use of real property and the design, construction, operation, closure and long-term care of the state commercial hazardous waste management facility;

(g) It shall have the authority to preempt any local ordinance or restriction which prohibits or has the effect of prohibiting the establishment or operation of the state commercial hazardous waste management facility;

(h) It may negotiate any agreement for site acquisition, design, construction, operation, closure, post-closure and perpetual care of the state commercial hazardous waste management facility and may negotiate any agreement with any local governmental unit pursuant to Chapter 18 of Title 17;

(i) It may promulgate rules and regulations necessary to effectuate the purposes of Chapter 18 of Title 17 not inconsistent therewith;

(j) If funds are not appropriated or if the appropriated funds are insufficient to carry out the provisions of Chapter 18 of Title 17, the department shall expend any funds available to it from any source to defray its costs to implement Chapter 18 of Title 17 through February 1, 1991.

(3) From and after July 1, 2016, the expenses of the Department of Finance and Administration shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under law such as rents, MAGIC fees, and other fees for services shall be deposited into the State General Fund as authorized by law.

(4) From and after July 1, 2016, the Department of Finance and Administration shall not charge another state agency a fee, assessment, rent or other charge for services or resources received by that state agency from the department.

SOURCES: Laws, 1989, ch. 544, § 12; Laws, 1990, ch. 506, § 5; Laws, 2016, ch. 459, § 70, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Laws of 2017, ch. 412, § 1, provides in part:

"(1) The Department of Finance and Administration is authorized to sell and convey all or any portion of certain state-owned real property, and any improvements thereon, located in the City of Jackson, Hinds County, Mississippi, consisting of approximately twenty-seven and one-half (27-½) acres located north of the City of Byram, west of the Interstate 55-Elton Road Interchange, the deed to which is recorded in Book 1798, Page 409 of the records in the office of the Chancery Clerk of Hinds County, at Jackson, Mississippi, and being more particularly described as follows:

[For a complete description of the property, see Section 1 of Chapter 412, Laws of 2017.]

"(2) In the event that any or all of the real property and improvements described in subsection (1) of this section is sold, the real property shall be sold for not less than the current fair market value as determined by the average of two (2) appraisals by qualified appraisers, one of whom shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) Any proceeds from the sale of the land, and any improvements thereon, listed in subsection (1) of this section, shall be deposited into the state land acquisition fund.

"(4) The Department of Finance and Administration may correct any discrepancies in the legal description of the property provided in this section.

"(5) The state shall retain all mineral rights in the property."

Amendment Notes — The 2016 amendment added (3) and (4).

Cross References — Powers and duties of Department with respect to federal-state programs, see § 7-1-255.

Duty of department to ensure that all departments within executive branch conform with certain organizational nomenclature, see § 7-17-11.

Provisions dealing with hazardous waste management facilities, see § 17-18-1 et seq.

Mississippi Hazardous Waste Facility Siting Authority, see § 17-18-7.

Additional powers and duties of the department, see § 27-104-3.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Department to maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act (Public Law 111-5) on unique Internet Web page accessible to public, see § 31-7-13.

Department of Environmental Quality, see § 49-2-4.

Department authority with respect to the Mississippi Veterans Memorial Stadium Property, see § 55-23-8.

Powers and duties of department with regard to state aircraft, see § 61-13-25.

Preparation of overall budget; budget to be in three parts; contents of each part, see §§ 27-103-121 through 27-103-127.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 27-104-103(1)(a), (b), and (n) address general powers and duties of Department of Finance and Administration. Patterson, May 12, 1993, A.G. Op. #93-0176.

The Board of Dental Examiners could only release funds in its possession, which consisted of the portion of the annual licensure fee collected to support a program to aid impaired dentists and/or dental hygienists, in accordance with the specific instruction and directives of the Department of Finance and Administration. Howell, Oct. 13, 2000, A.G. Op. #2000-0601.

§ 27-104-105. Prior clearance by Attorney General and State Personnel Board or authorization under Section 7-5-39 required for payment of certain claims for legal services; exceptions.

The Department of Finance and Administration shall not process any warrant requested by any state agency for payment for legal services without first determining that the services and contract were approved either by the

Attorney General and the State Personnel Board, or as authorized under Section 7-5-39(3); contracts for legal services performed for the State Highway Department in eminent domain cases shall not require approval by the State Personnel Board. The State Auditor shall test for compliance with this section.

SOURCES: Laws, 1991, ch. 473, § 1; Laws, 1992, ch. 470, § 1; Laws, 2012, ch. 546, § 7, eff from and after July 1, 2012.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 65-1-1 provides that whenever the term "Mississippi State Highway Department," or the term "department" meaning the Mississippi State Highway Department, appears in the laws of this state, it shall mean the Mississippi Department of Transportation.

Cross References — Requirement that State Auditor determine whether certain state institutions of higher learning and state agencies have received approval of the Attorney General for any contract for legal services, see § 7-7-225.

ATTORNEY GENERAL OPINIONS

There is no statutory authority for the State Personnel Board to delegate duties and responsibilities pertaining to the approval of legal services and contracts to the State Personnel Director. Robinson, Jan. 10, 1992, A.G. Op. #91-0945.

There are many instances in which emergency legal services are needed before state agency or state official can secure contract for legal services approved by Personnel Board and there have been occasions in which state entities have had to act without prior approval of Attorney General; however, in these instances, state agency employees or state officials act at their own risk in retaining legal counsel without such approval although it is permissible for State Personnel Board to approve such contracts after service has been partially, substantially, or even entirely completed. Dixon/Stringer, July 9, 1993, A.G. Op. #93-0488.

RESEARCH REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Eminent Domain, Form 31.1 (Complaint, petition, or declaration — For condemnation — By state agency — For state transportation facility).

§ 27-104-107. Lease, sublease, or lease-purchase of real property by Department of Finance and Administration.

(1) As used in this section, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Department" means the Department of Finance and Administration.

(b) "Commission" means the State Bond Commission.

(c) "Director" means the Executive Director of the Department of Finance and Administration.

(d) "Committee" means the Joint Legislative Budget Committee.

(e) "Office" means the Office of General Services of the Department of Finance and Administration.

(2) In addition to any other authority conferred upon it, and subject to the approval of its proposal by the commission, the department may enter into purchase contracts, lease-purchase agreements, rental agreements or other similar contracts for the ultimate acquisition of real property by the state. Before entering into any purchase contract or lease-purchase agreement, the office must first demonstrate to the Public Procurement Review Board satisfactory evidence that the contract would be economically advantageous to the state and that any consolidation of agencies into buildings at a common location would not impair or impede the function of that agency in this location. The contracts shall be approved by the Public Procurement Review Board and the State Bond Commission.

(3) Acquisitions shall be made only with legislative approval and be in accordance with a long-range development plan which the department shall annually prepare and present to the Legislature as a part of the Governor's capitol budget recommendation; however, if in the opinion of the Department of Finance and Administration circumstances involving a proposed acquisition are such that waiting for legislative approval will not be economically advantageous to the state or may cause the state financial loss, then such acquisition may be made upon approval by the State Bond Commission after consultation with the Chairman of the Public Property Committee of the Senate and the Chairman of the Public Buildings, Grounds and Lands Committee of the House of Representatives. Acquisition of lands and buildings shall be based upon appraisals approved by the Department of Finance and Administration. The office shall not pay an amount in excess of the appraised value of the land and buildings to be acquired. The appraised value shall be determined by taking the average of two (2) appraisals performed by two (2) appraisers to be selected by the Department of Finance and Administration. Further, the office shall file quarterly reports describing this process and its progress with the Chairman of the Senate Public Property Committee and the Chairman of the House Public Buildings, Grounds and Lands Committee.

(4) With the exception of the Public Employees' Retirement System, whenever any contract or agreement entered into is for and on behalf of the State of Mississippi, title to property, when acquired, shall vest in the State of Mississippi and not in the name of any state agency. Any building subject to a lease purchase agreement with the state shall be considered a state-owned building and therefore exempt from the assessment and levy of ad valorem taxes.

(5) All contracts executed under this section shall include provisions whereby the obligation of the state for any payment in excess of reasonable rental of the property while actually occupying the property is dependent upon the availability of appropriated funds for the purchase of the property.

(6) Activity under this section shall be reported annually in a detailed resolution from the commission to the committee.

(7) All funds allocated to rents and chargeable by the department shall be paid into a special fund that is created in the State Treasury. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the special fund shall be deposited to the credit of the special fund. This fund shall be used by the department (a) to retire indebtedness incurred in the acquisition of properties under this section; (b) to renovate, maintain and otherwise protect subject properties; (c) to pay the cost of utilities necessary to operate the buildings; and (d) to acquire properties in accordance with this section.

SOURCES: Laws, 1993, ch. 311, § 1; Laws, 2009, ch. 546, § 10, eff from and after passage (approved Apr. 15, 2009.)

ATTORNEY GENERAL OPINIONS

The Department of Corrections (DOC) may enter into a lease purchase agreement for the property with the total outlay therefor to be approved by the Executive Director of the the Department of Finance and Administration; pursuant to subsection (4) of this section title to the property so acquired by DOC would vest in the State and not in the name of DOC. Anderson, July 18, 2003, A.G. Op. 03-0276.

If the Department of Finance and Administration determines that the assumption of existing leases will not impair the intended use of the real property and the lease instruments themselves do not contain provisions which are beyond the authority of the Department to agree to, then the leases may be assumed. Stringer, Oct. 12, 2006, A.G. Op. 06-0516.

§ 27-104-109. Department to create report of Mississippi-based companies that manufacture products using recycled materials; contents of report.

(1) In addition to any other duties of the Department of Finance and Administration (DFA), by January 1, 2009, the DFA shall create a report of Mississippi-based companies that manufacture products using recycled materials. In addition to the name, location and phone number of the company, the report shall include:

(a) The name of products that are produced using recycled materials; and

(b) The percent of the product that is made from recycled materials; and

(c) The recommended use of such products by state agencies.

(2) The DFA shall negotiate a price for the purchase of the products by state agencies and political subdivisions of the state and create rules and regulations to encourage state agencies and political subdivisions of the state to purchase the products at the negotiated prices.

SOURCES: Laws, 2008, ch. 404, § 1, eff from and after July 1, 2008.

MISSISSIPPI ACCOUNTABILITY AND TRANSPARENCY ACT

Sec.
27-104-151. Short title.
27-104-152. Legislative findings and intent.
27-104-153. Definitions.
27-104-155. Development, operation and content of searchable website containing information on expenditures of state funds from all funding sources; no disclosure of proprietary information; time period for updating information on website; creation and content of IHL Accountability and Transparency website; creation and content of Community and Junior Colleges Accountability and Transparency website.
27-104-157. Form and timeline for state agencies to report information.
27-104-158. State Auditor to examine agencies' compliance with Sections 27-104-151 through 27-104-159.
27-104-159. Relation to Mississippi Public Records Act.
27-104-161. No authority to review, approve or deny expenditures of Legislature.
27-104-163. Publication of meeting notice on searchable website; applicability.
27-104-165. Phased-in plan for procurement portal authorized.
27-104-167. Certain required annual reports of agencies, boards, commissions, departments and institutions to be published on the searchable website of the Department of Finance and Administration website.

§ 27-104-151. Short title.

Sections 27-104-151 through 27-104-159 shall be known as the "Mississippi Accountability and Transparency Act of 2008."

SOURCES: Laws, 2008, ch. 470, § 2, eff from and after passage (approved Apr. 14, 2008.)

§ 27-104-152. Legislative findings and intent.

The Legislature finds that the public should be able to easily access the details on how the state is spending tax dollars and other state funds and what performance results are achieved for the expenditures. It is the intent of the Legislature that the state, acting through the Department of Finance and Administration, create and maintain a searchable website providing access, to the extent possible, to where, for what purpose and what results are achieved for all taxpayer investments in state government.

SOURCES: Laws, 2011, ch. 489, § 1, eff from and after July 1, 2011.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 27-104-153. Definitions.

As used in Sections 27-104-151 through 27-104-159:

(a) "Searchable website" means an Internet site that:

(i) Allows the public to access information identified in Sections 27-104-151 through 27-104-159 without any fee or charge to the public for that access;

(ii) Provides keyword or other efficient search capability to support the public's ability to find, aggregate and display that information with reasonable ease by accessing a single website; and

(iii) Allows the public to programmatically search and access all data in a serialized machine readable format, such as XML, via a Web-services application programming interface.

(b) "Agency" means a state agency, department, institution, board, commission, council, office, bureau, division, committee or subcommittee of the state. The term "agency" includes individual agencies and programs as well as multiple agencies whenever programs and activities involve more than one (1) agency. The term "agency" includes all elective offices in the executive, legislative and judicial branches of state government. The term "agency" does not include counties or municipalities.

(c) "Entity" or "recipient" means a corporation, association, union, limited liability company, limited liability partnership, grantee, contractor, county, municipality or other local government entity, or any other legal business entity, including a nonprofit entity. The term "entity" or "recipient" does not include an individual recipient of state public assistance.

(d) "Expenditure of state funds" means the disbursement or transfer of any funds, from any source or funds, whether appropriated or nonappropriated, from any agency. The term "expenditure of state funds" includes the expenditures from bond proceeds.

(e) "Funding action" means the transfer of funds from a state agency to another entity for a specific purpose. These would include subgranting of funds for specific purposes or the funding through bonds or other authority specific projects and actions.

(f) "Funding source" means the state account against which an expenditure is recorded.

(g) "State audit or report" means any audit or report issued by the State Auditor, Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) or an executive body relating to the entity or recipient of funds or to the budget program or activity or agency.

SOURCES: Laws, 2008, ch. 470, § 3; Laws, 2011, ch. 489, § 2; brought forward without change, Laws, 2013, ch. 418, § 2, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the introductory paragraph. The words "this section" were changed to "Sections 27-104-151 through 27-104-159." The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 27-104-155. Development, operation and content of searchable website containing information on expenditures of state funds from all funding sources; no disclosure of proprietary information; time period for updating information on website; creation and content of IHL Accountability and Transparency website; creation and content of Community and Junior Colleges Accountability and Transparency website.

(1) The Department of Finance and Administration shall develop and operate a searchable website that includes information on expenditures of state funds from all funding sources. The website shall have a unique and simplified website address, and the department shall require each agency that maintains a generally accessible Internet site or for which a generally accessible Internet site is maintained to include a link on the front page of the agency's Internet site to the searchable website required under this section.

(a) With regard to disbursement of funds, the website shall include, but not be limited to:

(i) The name and principal location of the entity or recipients of the funds, excluding release of information relating to an individual's place of residence, the identity of recipients of state or federal assistance payments, and any other information deemed confidential by state or federal law relating to privacy rights;

(ii) The amount of state funds expended;

(iii) A descriptive purpose of the funding action or expenditure;

(iv) The funding source of the expenditure;

(v) The budget program or activity of the expenditure;

(vi) The specific source of authority and descriptive purpose of the expenditure, to include a link to the funding authorization document(s) in a searchable PDF form;

(vii) The specific source of authority for the expenditure including, but not limited to, a grant, subgrant, contract, or the general discretion of the agency director, provided that if the authority is a grant, subgrant or contract, the website entry shall include a grant, subgrant or contract number or similar information that clearly identifies the specific source of authority. The information required under this paragraph includes data relative to tax exemptions and credits;

(viii) The expending agency;

(ix) The type of transaction;

(x) The expected performance outcomes achieved for the funding action or expenditure;

(xi) Links to any state audit or report relating to the entity or recipient of funds or the budget program or activity or agency; and

(xii) Any other information deemed relevant by the Department of Finance and Administration.

(b) When the expenditure of state funds involves the expenditure of bond proceeds, the searchable website must include a clear, detailed description of the purpose of the bonds, a current status report on the project or projects being financed by the bonds, and a current status report on the payment of the principal and interest on the bonds.

(c) The searchable website must include access to an electronic summary of each grant, including amendments; subgrant, including amendments; contract, including amendments; and payment voucher that includes, wherever possible, a hyperlink to the actual document in a searchable PDF format, subject to the restrictions in paragraph (d) of this section. The Department of Finance and Administration may cooperate with other agencies to accomplish the requirements of this paragraph.

(d) Nothing in Sections 27-104-151 through 27-104-159 shall permit or require the disclosure of trade secrets or other proprietary information, including confidential vendor information, or any other information that is required to be confidential by state or federal law.

(e) The information available from the searchable website must be updated no later than fourteen (14) days after the receipt of data from an agency, and the Department of Finance and Administration shall require each agency to provide to the department access to all data that is required to be accessible from the searchable website within fourteen (14) days of each expenditure, grant award, including amendments; subgrant, including amendments; or contract, including amendments; executed by the agency.

(f) The searchable website must include all information required by this section for all transactions that are initiated in fiscal year 2015 or later. In addition, all information that is included on the searchable website from the date of the inception of the website until July 1, 2014, must be maintained on the website according to the requirements of this section before July 1, 2014, and remain accessible for ten (10) years from the date it was originally made available. All data on the searchable website must remain accessible to the public for a minimum of ten (10) years.

(g) For the purposes of this subsection (1), the term "contract" includes, but is not limited to, personal and professional services contracts.

(2) The Board of Trustees of State Institutions of Higher Learning shall create the IHL Accountability and Transparency website to include its executive office and the institutions of higher learning no later than July 1, 2012. This website shall:

(a) Provide access to existing financial reports, financial audits, budgets and other financial documents that are used to allocate, appropriate, spend and account for appropriated funds;

(b) Have a unique and simplified website address;

(c) Be directly accessible via a link from the main page of the Department of Finance and Administration website, as well as the IHL website and the main page of the website of each institution of higher learning;

(d) Include other links, features or functionality that will assist the public in obtaining and reviewing public financial information;

(e) Report expenditure information currently available within these enterprise resource planning (ERP) computer systems; and

(f) Design the reporting format using the existing capabilities of these ERP computer systems.

(3) The Mississippi Community College Board shall create the Community and Junior Colleges Accountability and Transparency website to include its executive office and the community and junior colleges no later than July 1, 2012. This website shall:

(a) Provide access to existing financial reports, financial audits, budgets and other financial documents that are used to allocate, appropriate, spend and account for appropriated funds;

(b) Have a unique and simplified website address;

(c) Be directly accessible via a link from the main page of the Department of Finance and Administration website, as well as the Mississippi Community College Board website and the main page of the website of each community and junior college;

(d) Include other links, features or functionality that will assist the public in obtaining and reviewing public financial information;

(e) Report expenditure information currently available within the computer system of each community and junior college; and

(f) Design the reporting format using the existing capabilities of the computer system of each community and junior college.

(4) Not later than January 1, 2016, the owner or owners of a community hospital, as defined in Section 41-13-10, shall create and maintain an accountability and transparency website for the community hospital or set up a separate section for the community hospital on the current website of the owner or owners. This website of the community hospital or section of the website of the owner or owners shall:

(a) Provide access to existing financial reports, financial audits, budgets and other financial documents of the community hospital that are used to allocate, appropriate, spend and account for public funds;

(b) Have a unique and simplified website address if it is a new website for the community hospital, or be an easily accessible section of the website of the owner or owners;

(c) Include links, features or functionality that will assist the public in obtaining and reviewing public financial information of the community hospital;

(d) Report expenditure information of the community hospital in functional expenditure categories that is currently available within the computer system of the community hospital; and

(e) Design the reporting format using the existing capabilities of the computer system or systems of the owner or owners of the community hospital.

SOURCES: Laws, 2008, ch. 470, § 4; Laws, 2011, ch. 489, § 3; Laws, 2013, ch. 418, § 1; Laws, 2015, ch. 431, § 5; Laws, 2015, ch. 484, § 7, eff from and after Jan. 1, 2016.

Joint Legislative Committee Note — Section 5 of ch. 431, Laws of 2015, effective July 1, 2015 (approved March 31, 2015), amended this section. Section 7 of ch. 484, Laws of 2015, effective from and after January 1, 2016 (approved April 22, 2015), also amended this section. As set out above, this section reflects the language of both amendments, effective January 1, 2016, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 17, 2015, meeting of the Committee.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 27-104-157. Form and timeline for state agencies to report information.

The Department of Finance and Administration shall have the authority to establish the form, processes and procedures, and timelines for agencies to report the information required by Sections 27-104-151 through 27-104-159. At the latest, each agency shall provide access to all required data within fourteen (14) days after the data becomes available to the agency. All agencies shall fully cooperate with the Department of Finance and Administration in compiling and providing all information necessary to comply with the requirements of Sections 27-104-151 through 27-104-159.

SOURCES: Laws, 2008, ch. 470, § 5; Laws, 2011, ch. 489, § 4, eff from and after July 1, 2011.

§ 27-104-158. State Auditor to examine agencies' compliance with Sections 27-104-151 through 27-104-159.

The Office of the State Auditor shall examine agencies' compliance with the requirements of Sections 27-104-151 through 27-104-159 in the course of the powers and duties of the office as prescribed in Section 7-7-211.

SOURCES: Laws, 2011, ch. 489, § 5, eff from and after July 1, 2011.

§ 27-104-159. Relation to Mississippi Public Records Act.

Nothing in Sections 27-104-151 through 27-104-159 shall be construed to supersede the Mississippi Public Records Act of 1983, as amended, except that Sections 27-104-151 through 27-104-158 shall apply to expenditures of the legislative branch.

SOURCES: Laws, 2008, ch. 470, § 6; Laws, 2011, ch. 489, § 6, eff from and after July 1, 2011.

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

§ 27-104-161. No authority to review, approve or deny expenditures of Legislature.

No provision of Sections 27-104-151 through 27-104-159 shall be construed as conferring upon the Department of Finance and Administration any authority to review, approve or deny any expenditures or contracts entered into by the Legislature or any of its committees, or to impose any requirement on the Legislature or any of its committees to take any action other than to disclose expenditures and contracts entered into on or after July 1, 2011. For the purposes of this section, the term "contract" includes, but is not limited to, personal and professional services contracts.

SOURCES: Laws, 2011, ch. 489, § 7; Laws, 2015, ch. 431, § 6, eff from and after July 1, 2015.

§ 27-104-163. Publication of meeting notice on searchable website; applicability.

The Department of Finance and Administration shall publish on its searchable website notice of any regular meeting held by a state agency, other than a legislative committee, in accordance with Section 25-41-13. For purposes of this section, the term "state agency" means an agency, department, institution, board, commission, council, office, bureau, division, committee or subcommittee of the state. However, the term "state agency" does not include institutions of higher learning, community and junior colleges, counties or municipalities.

SOURCES: Laws, 2013, ch. 388, § 2, eff from and after July 1, 2013.

§ 27-104-165. Phased-in plan for procurement portal authorized.

The Department of Finance and Administration, with assistance from the Mississippi Department of Information Technology Services and the State Personnel Board, may develop a phased-in plan that ensures that the procurement portal required under Section 25-53-151 be fully functional by July 1, 2015.

SOURCES: Laws, 2014, ch. 447, § 2, eff from and after July 1, 2014.

§ 27-104-167. Certain required annual reports of agencies, boards, commissions, departments and institutions to be published on the searchable website of the Department of Finance and Administration website.

The Department of Finance and Administration shall publish on its searchable website the annual report of each agency, board, commission, department and institution required to be prepared by Section 27-101-1. The Department of Finance and Administration shall have the authority to establish the forms, processes, procedures and timelines to furnish the annual report. All such agencies, boards, commissions, departments and institutions shall fully cooperate with the Department of Finance and Administration in providing the information necessary to comply with the requirements of this section.

SOURCES: Laws, 2017, ch. 363, § 1, eff from and after passage (approved Mar. 20, 2017.)

MISSISSIPPI BUDGET TRANSPARENCY AND SIMPLIFICATION ACT OF 2016

Sec.

27-104-201. Short title.
27-104-203. State agencies prohibited from charging another state agency fees, etc., for services or resources received; exemptions.
27-104-205. Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund; exemptions.

§ 27-104-201. Short title.

This act [Chapter 459, Laws of 2016] shall be known and may be cited as the "Mississippi Budget Transparency and Simplification Act of 2016."

SOURCES: Laws, 2016, ch. 459, § 1, eff from and after July 1, 2016.

Editor's Note — Chapter 459, Laws of 2016, enacted this section and Sections 27-104-203 and 27-104-205 and amended Sections 75-76-325, 75-76-33, 75-76-81, 75-76-85, 45-11-3, 45-11-5, 45-11-7, 25-53-5, 7-7-3, 25-53-29, 25-53-151, 25-53-171, 31-7-10, 63-9-31, 83-1-27, 83-2-33, 83-2-35, 83-5-17, 83-5-41, 83-5-45, 83-5-69, 83-5-72, 83-5-73, 83-5-77, 83-9-3, 83-17-71, 83-17-519, 83-19-21, 83-21-1, 83-37-29, 83-39-3, 83-73-9, 45-6-15, 53-1-77, 53-11-23, 53-1-7, 53-1-73, 53-3-13, 25-9-141, 7-9-22, 7-3-59, 23-15-5, 23-15-169.7, 29-1-95, 77-3-87, 77-1-6, 77-1-15, 77-1-29, 77-1-53, 77-3-8, 77-3-89, 77-3-503, 77-3-507, 77-3-509, 77-7-127, 77-7-333, 77-7-339, 77-7-337, 77-9-489, 77-11-201, 99-18-1, 27-19-179, 11-46-17, 71-3-100, 7-5-61, 25-9-119, 27-104-103, and 99-19-73.

§ 27-104-203. State agencies prohibited from charging another state agency fees, etc., for services or resources received; exemptions.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent, audit fee, personnel fee or other charge for services or resources received. The provisions of this section shall not apply (a) to grants, contracts, pass-through funds, project fees or other charges for services between state agencies and the Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education, nor (b) to charges for services between the Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education, nor (c) to federal grants, pass-through funds, cost allocation charges, surplus property charges or project fees between state agencies as approved or determined by the State Fiscal Officer. The Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education shall retain the authority to charge and be charged for expenditures that they deemed nonrecurring in nature by the State Fiscal Officer.

SOURCES: Laws, 2016, ch. 459, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 1, eff from and after passage (approved June 23, 2017.)

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2017 amendment, effective June 23, 2017, added (c) at the end of the second sentence; and made a related change.

§ 27-104-205. Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund; exemptions.

(1) From and after July 1, 2016, the expenses of the following enumerated state agencies shall be defrayed by appropriation of the Legislature from the State General Fund: the State Fire Marshal, the State Fire Academy, the Office of Secretary of State (not including the Preneed Contracts Loss Recovery Fund), the Mississippi Public Service Commission, the Mississippi Department of Information Technology Services, the State Personnel Board, the Mississippi Department of Insurance (not including the Municipal Fire Protection Fund, Section 83-1-37, the County Volunteer Fire Department Fund, Section 83-1-39, and the Mississippi Propane Education and Research Fund, Section 75-57-119), the Mississippi Law Enforcement Officers' Minimum Standards Board; the Mississippi Gaming Commission; the Mississippi Oil and Gas Board; the Mississippi Department of Revenue — License Tag; the

Office of the State Public Defender; the Mississippi Workers' Compensation Commission (not including the Second Injury Trust Fund); the Office of Attorney General; and the Mississippi Department of Finance and Administration (not including the Statewide Cost Allocation Plan, the Office of Surplus Property and the Office of Insurance). Beginning July 1, 2016, any fees, assessments or other revenues charged for the support of the above-named state agencies shall be deposited into the State General Fund, and any special fund or depository established within the State Treasury for the deposit of such fees, assessments or revenues shall be abolished and the balance transferred to the State General Fund. Expenses heretofore drawn from such special funds or other depositories shall be drawn from the agencies General Fund Account.

(2) Beginning with the fiscal year ending June 30, 2016, the amount to be appropriated annually from the State General Fund for the support of each of the above-named state agencies shall not exceed the amount appropriated for such purpose in the preceding fiscal year, plus any increases in or additional fees, assessments or other charges authorized by act of the Legislature for the succeeding fiscal year.

(3) The provisions of this section shall not apply to any trust fund account that is maintained by any above-named agency.

(4) The provisions of this section shall not prohibit any of the above-named agencies from maintaining clearing accounts in approved depositories.

(5) The provisions of this section shall not apply to any trust fund accounts maintained by the Public Employees' Retirement System and protected under Section 272A of the Mississippi Constitution of 1890.

SOURCES: Laws, 2016, ch. 459, § 3; Laws, 2017, 1st Ex Sess, ch. 7, § 2, eff from and after passage (approved June 23, 2017.)

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides: "SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.'"

Amendment Notes — The 2017 amendment, effective June 23, 2017, in (1), added the parentheticals, and deleted "the Mississippi Tort Claims Board" following "Mississippi Law Enforcement Officers' Minimum Standards Board."

CHAPTER 105

Depositories

Article 1. State Depositories 27-105-1
Article 3. Depositories for Funds of Local Governments 27-105-301

ARTICLE 1.

STATE DEPOSITORIES.

SEC.
27-105-1. State Depository Commission to mean State Treasurer; depositories for state funds.
27-105-3. Banks defined.
27-105-5. Qualification as public funds depository; authority of State Treasurer; definitions.
27-105-6. Further qualification as public funds depository participating in public funds guaranty pool.
27-105-7. Bonds offered for security; how dealt with.
27-105-9. Application for keeping state funds; pro rata allocation.
27-105-11. Commission issued depository.
27-105-13. Commission form.
27-105-15. Record of proceedings.
27-105-17. Employees; regulations.
27-105-19. All moneys received to be receipted for in triplicate.
27-105-21. Deposits at interest of certain funds with state depositories; reports.
27-105-23. How tax collectors may make settlements.
27-105-25. Failure to pay treasurer's check.
27-105-27. Loan of state funds unlawful or removal of same a felony.
27-105-29. Failure to perform duty under this article a misdemeanor.
27-105-31. Governor and treasurer to count depository receipts as cash.
27-105-33. Deposit and investment of excess state funds.
27-105-35. Commission meetings and duties.
27-105-37. Acceptance by banks of checks payable to state agency.

§ 27-105-1. State Depository Commission to mean State Treasurer; depositories for state funds.

Wherever the term "State Depository Commission" appears in any law, the same shall mean the State Treasurer. All funds deposited or invested by and through the State Treasurer shall be deposited in the manner prescribed in Section 27-105-33. All such deposits shall be subject to payment when demanded by the State Treasurer, except time deposits as provided by Section 27-105-33. Such time deposits shall be subject to payment as specified by the contract or certificate of deposit. All deposits made by the State Treasurer shall also be subject to such regulations as are imposed by law and by rules promulgated by the State Treasurer for such deposits. The State Treasurer, a state institution or a state agency may compensate depositories for the expense in maintaining deposit accounts and in handling items related thereto, subject to approval by the State Treasurer and Executive Director of the Department of Finance and Administration.

The Commissioner of Banking and Consumer Finance shall serve to advise the State Treasurer as to the condition and safety as a state depository of any financial institution, especially as to any impairment of capital or surplus. Such information or recommendation shall be considered confidential information and shall not be disclosed.

SOURCES: Codes, Hemingway's 1917, § 4191; 1930, § 4324; 1942, § 9126; Laws, 1908, ch. 96; Laws, 1938, ch. 182; Laws, 1969 Ex. Sess. ch. 53, § 5; Laws, 1982, ch. 343; Laws, 1985, ch. 312, § 1; Laws, 1988, ch. 473, § 1; Laws, 1989, ch. 544, § 162; Laws, 1992, ch. 367, § 1; Laws, 1994, ch. 622, § 156, eff from and after July 1, 1994.

Cross References — Depository for federal-aid funds, see § 7-9-25.

Selection of depositories by state departments, institutions, and agencies, see § 7-9-43.

Depositories for local government funds, see § 27-105-301 et seq.

Selection of depository by board of barber examiners, see § 73-5-5.

JUDICIAL DECISIONS

1. In general.

Depository laws held to supersede Code 1906, § 3485. Bank of Commerce v. Clark, 114 Miss. 850, 75 So. 595 (1917).

Where a surety company paid state money owed by bank as state depository, surety company had no priority over general creditors by subrogation because the state itself had no such right. Potter v. Fidelity & Deposit Co., 101 Miss. 823, 58 So. 713 (1912).

This section [Code 1942, § 9126] does not conflict with § 137 of the Constitution. State ex rel. Dist. Att'y v. Edwards, 93 Miss. 704, 46 So. 964 (1908).

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 8 et seq.

15A Am. Jur. Legal Forms 2d, Public Funds, §§ 211:13 et seq.

CJS. 26A C.J.S., Depositaries §§ 40 et seq.

§ 27-105-3. Banks defined.

The words "bank" or "banks," whenever used in this chapter, shall include trust companies.

SOURCES: Codes, Hemingway's 1917, § 4209; 1930, § 4325; 1942, § 9127; Laws, 1908, ch. 97.

§ 27-105-5. Qualification as public funds depository; authority of State Treasurer; definitions.

(1) Any financial institution maintaining a deposit-taking facility in this state whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may qualify as a public funds depository by submitting an application to the State Treasurer as provided by Section 27-105-9, if the institution has a primary capital to total

assets ratio of five and one-half percent (5½%) or more. That ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying institutions at June 30 of the same calendar year, and an institution shall not be a qualified depository and shall not receive any public funds unless its ratio has been certified annually by the Treasurer as meeting the prescribed requirement. Each applicant shall furnish to the State Treasurer such financial statements, balance sheets or other documentation, sworn to by a duly elected officer, on such date or dates and on such forms as the State Treasurer may require. Any knowing or willful misstatement of fact on those forms shall subject the officer swearing to them to the penalty of perjury, and the financial institution of which he is an officer shall not be eligible to serve as a depository for a period of one (1) year beginning with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, the institution shall place on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to one hundred five percent (105%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto.

(2) Any financial institution maintaining a deposit-taking facility in this state whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation and which has been in existence for three (3) or more years may qualify as a public funds depository and public funds guaranty pool member under Section 27-105-6 by submitting an application to the State Treasurer as provided by Section 27-105-9, if the institution has a primary capital to total assets ratio of six and one-half percent (6½%) or more and otherwise meets the requirements of Section 27-105-6. That ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying institutions at June 30 of the same calendar year, and an institution shall not be a member of the public funds guaranty pool unless its ratio has been certified annually by the Treasurer as meeting the prescribed requirement. Each applicant shall furnish to the State Treasurer such financial statements, balance sheets or other documentation, sworn to by a duly elected officer, on such date or dates and on such forms as the State Treasurer may require. Any knowing or willful misstatement of fact on those forms shall subject the officer swearing to them to the penalty of perjury and the financial institution of which he is an officer shall not be eligible to serve as a depository for a period of one (1) year beginning with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, the institution shall meet its security requirement of one hundred five percent (105%) by placing on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to fifty-two and one-half percent (52½%) of the average daily balance of funds on

deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto, and executing a guarantee equal to the balance of fifty-two and one-half percent (52½%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto.

(3) The term "qualified bonds, notes and liquid securities" as used in this section shall mean:

(a) All securities that are direct obligations of the United States Treasury or any other obligations fully guaranteed by the United States government.

(b) Bonds, notes and other obligations of the Federal Home Loan Bank, Federal National Mortgage Association, Federal Land Banks, Banks for Cooperatives, and Federal Intermediate Credit Banks, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the Farm Credit System Financial Assistance Corporation, the United States Postal Service, the Federal Financing Bank, the Student Loan Marketing Association, the Small Business Administration, the General Services Administration, the Washington Metropolitan Area Transit Authority, the Maritime Administration, the Export-Import Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, loan participations that carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture or other similar agencies approved by the State Treasurer.

(c) Obligations of the Tennessee Valley Authority.

(d) Legal obligation or revenue bonds of the State of Mississippi, its agencies, or any political subdivision of the state, or any municipality located in the State of Mississippi, or the Yazoo Mississippi Delta and the Mississippi Levee Districts, or the Mississippi Higher Education Assistance Corporation or its successors, or any body corporate and politic created under the laws of the State of Mississippi.

(e) General obligations issued by any state or by a county, parish or municipality of any state, the full faith and credit of which are pledged to the payment of principal and interest, that are rated "A" or better by any recognized national rating agency engaged in the business of rating bonds.

(f) Surety bonds of any surety company authorized to do business in the State of Mississippi.

(g) All bonds authorized as security for state funds under paragraphs (c), (d) and (e), inclusive, shall be investment quality, and any bonds under paragraphs (c), (d), (e) and (f), inclusive, which are rated substandard by any of the appropriate supervisory authorities having jurisdiction over the depository or by any recognized national rating agency engaged in the business of rating bonds, shall not be eligible for pledging as security to the State of Mississippi by any qualified state depository.

No bonds shall be accepted as security for more than their stated par value or market value, whichever is lower, except bonds and obligations of the State of Mississippi and Mississippi State Highway bonds or notes, which may be accepted as security at par value or market value, whichever is greater.

The bonds, notes and liquid securities to be placed on deposit shall secure both deposits and the accrued interest thereon.

Money shall be drawn from the depositories so as to leave in each as near as practicable, its equitable proportion of state funds.

The State Treasurer is authorized and empowered to:

(i) Deposit for safekeeping in the vaults of any of the state or national banks located within this state that are members of the Federal Deposit Insurance Corporation and that have appropriate safekeeping facilities approved by the State Depository Commission, any federal reserve bank, any federal reserve branch bank, or any bank that is a member of the Federal Reserve System and is located in a city where there is a federal reserve bank or a federal reserve branch bank, the securities placed with him by financial institutions qualifying as state depositories; or

(ii) Accept, in lieu of the securities themselves, safekeeping trust receipts issued to the State Treasurer by the authorized safekeeping banks listed in subparagraph (i) above; the safekeeping trust receipts shall describe the securities and show that the securities are held for safekeeping for the account of the State Treasurer or other governmental unit. The securities so deposited shall not be commingled in any manner with the assets of the safekeeping bank.

The safekeeping banks listed in subparagraph (i) above are authorized to issue to the State Treasurer their safekeeping trust receipts based on safekeeping trust receipts issued to them by any of their correspondent banks that are members of the Federal Reserve System and are located in any federal reserve city and that have physical custody of the pledged securities.

In no event shall the State Treasurer deposit for safekeeping with any depository securities placed by the depository with the State Treasurer in qualifying as a public funds depository, nor shall he accept a safekeeping trust receipt by or from a depository covering securities it owns in order to secure state funds on deposit with it.

(4) In fulfilling the requirements of this Section 27-105-5, the State Treasurer shall:

(a) Maintain perpetual inventory of pledged collateral and perform monthly market valuations and quality ratings.

(b) Monitor and confirm, as often as deemed necessary by the Treasurer, the pledged collateral held by third party custodians.

(c) Perfect an interest in pledged collateral by having pledged securities moved into an account established in the Treasurer's name. This action shall be taken at the discretion of the Treasurer.

(d) Review the reports of each qualified public funds depository for material changes in capital accounts or changes in name, address or type of institution, record the average daily balances of public deposits held; and monitor the collateral-pledging levels and required collateral based on the average daily balances.

(e) Compare public deposit information reported by qualified public funds depositories and public depositors. That comparison shall be conducted for qualified public depositories based on established financial condition criteria of record on September 30.

(f) Verify the reports of any qualified public funds depository relating to public deposits it holds when necessary to protect the integrity of the public deposits program.

(g) Confirm public deposits, to the extent possible under current law, when needed.

(h) Require at his or her discretion the filing of any information or forms required under this chapter to be by electronic data transmission. Those filings of information or forms shall have the same enforceability as a signed writing.

(5) A qualified public funds depository shall:

(a) Within fifteen (15) days after the end of each calendar month or when requested by the Treasurer, submit to the Treasurer a written report, under oath, indicating the average daily balance of all public deposits held by it during the reported month, required collateral, a detailed schedule of all securities pledged as collateral, selected financial information, and any other information that the Treasurer determines necessary to administer this chapter.

(b) Provide to each public depositor annually, not later than thirty (30) days following the public depositor's fiscal year end, the following information on all open accounts identified as a "public deposit" for that public depositor as of its fiscal year end, to be used for confirmation purposes: the federal employer identification number of the public funds depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type and actual account balance on deposit. Any discrepancy found in the confirmation process shall be reconciled within sixty (60) days of the public depositor's fiscal year end.

(c) Submit to the Treasurer annually, not later than sixty (60) days of the public depositor's fiscal year end, a report of all public deposits held for the credit of all public depositors at the close of business on each public depositor's fiscal year end. The annual report shall consist of public deposit information in a report format prescribed by the Treasurer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Treasurer.

(6) Public depositors shall comply with the following requirements:

(a) A public depositor shall ensure that the name of the public depositor and its tax identification number are on the account or certificate provided to the public depositor by the qualified public depository in a manner sufficient to disclose the identity of the public depositor;

(b) Not later than thirty (30) days following its fiscal year end, a public depositor shall notify the State Treasurer of its official name, address, federal tax identification number, and provide a listing of all accounts that it had with qualified public depositories, including the deposit balance in those accounts, as of its fiscal year end. A public entity established during the year shall furnish its official name, address and federal tax identification number to the State Treasurer before making any public deposit.

(7) Any information contained in a report of a qualified public funds depository required under Section 27-105-5 or 27-105-6 shall be considered confidential and exempt from disclosure and not subject to dissemination to anyone other than the State Treasurer and the State Auditor under the provisions of this chapter.

(8) The State Treasurer is empowered to assume responsibility as successor pledgee as agent on behalf of any county, municipality or other governmental unit of any and all collateral pledged before July 1, 2001, to that county, municipality or governmental unit by that public funds depository. Upon assuming responsibility as successor pledgee as provided in this subsection (8), the State Treasurer is empowered to sign such documents on behalf of any such county, municipality or governmental unit as may be required by a trustee custodian, including, but not limited to, any documentation necessary to change the pledgee from the county, municipality or governmental unit as pledgee to the State Treasurer as agent.

(9) As used in this section and Section 27-105-6, the following terms shall have the meanings set forth below:

(a) The term "primary capital" means the sum of common stockholders' equity capital, including common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values; noncumulative perpetual preferred stock, including any related surplus; and minority interests in the equity capital accounts of consolidated subsidiaries; the allowance for loan and lease losses; cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least twenty (20) years) and any related surplus; perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative; hybrid capital instruments, including mandatory convertible debt securities; term subordinated debt and intermediate-term preferred stock (original average maturity of five (5) years or more) and any related surplus; and net unrealized holding gains on equity securities.

(b) The term "assets classified loss" means:

(i) When measured as of the date of examination of the financial institution, those assets that have been determined by an evaluation made by a state or federal examiner as of that date to be a loss; and

(ii) When measured as of any other date, those assets:

(A) That have been determined: 1. by an evaluation made by a state or federal examiner at the most recent examination of the financial institution to be a loss, or 2. by evaluations made by the financial institution since its most recent examination to be a loss; and

(B) That have not been charged off from the financial institution's books or collected.

(c) The term "intangible assets" means those assets that would be required to be reported in the item for intangible assets in a Federal Deposit Insurance Corporation (FDIC) banking institution's "Reports of Condition and Income" (Call Reports), regardless of whether the institution is insured by the FDIC.

(d) The term "mandatory convertible debt" means a subordinated debt instrument meeting the requirements of the Federal Deposit Insurance Corporation that requires the issuer to convert the instrument into common or perpetual preferred stock by a date at or before the maturity of the debt instrument. The maturity of these instruments must be twelve (12) years or less.

(e) The term "mortgage servicing rights" means those assets (net of any related valuation allowances) that result from contracts to service loans secured by real estate (that have been securitized or are owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

(f) The term "perpetual preferred stock" means a preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder and that has no other provisions that will require future redemption of the issue. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(g) The term "total assets" means the average of total assets of any financial institution that are or would be included in a Federal Deposit Insurance Corporation (FDIC) banking institution's "Reports of Condition and Income" (Call Reports), regardless of whether the institution is insured by the FDIC, plus the allowance for loan and lease losses, minus assets classified loss and minus intangible assets other than mortgage servicing rights.

(h) The term "average daily balance" means the average daily balance of public deposits of each governmental unit held during the reported month. The average daily balances must be determined by totaling, by account, the daily balance held by the depositor and then dividing the total by the number of calendar days in the month. Deposit insurance is then deducted from each public depositor's balance and the resulting amounts are totaled to obtain the average daily balance.

(i) The term "public funds" means funds in which the entire beneficial interest is owned by a governmental unit or funds held in the name of a public official of a governmental unit charged with the duty to receive or administer funds and acting in such official capacity.

(j) The term "governmental unit" means the State of Mississippi, and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not such body or instrumentality has the authority to levy taxes or to sue or be sued in its own name. Further, it shall mean any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including, but not limited to any county, municipality, school district, community hospital as defined in Section 41-13-10, airport authority or other instrumentality thereof, whether or not such body or instrumentality has the authority to levy taxes or to sue or be sued in its own name. It is the intent to include all state and political subdivisions or instrumentalities thereof whether specifically recited herein or not.

SOURCES: Codes, Hemingway's 1917, § 4192; 1930, § 4326; 1942, § 9128; Laws, 1910, ch. 224; Laws, 1918, ch. 153; Laws, 1932, ch. 177; Laws, 1934, ch. 215; Laws, 1936, ch. 169; Laws, 1942, ch. 142; Laws, 1948, ch. 205, § 1; Laws, 1969, Ex Sess ch. 53, § 6; Laws, 1971, ch. 421, § 1; Laws, 1972, ch. 443, § 2; Laws, 1979, ch. 417, § 9; Laws, 1985, ch. 312, § 2; Laws, 1988, ch. 473, § 2; Laws, 1990, ch. 327, § 1; Laws, 1990, ch. 328, § 1; Laws, 1995, ch. 567, § 2; Laws, 1999, ch. 404, § 1; Laws, 2000, ch. 408, § 1; Laws, 2003, ch. 336, § 1, eff from and after July 1, 2003.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Duties of bond clerk of State Treasury, see § 7-9-7.

State treasurer's duties generally, see § 7-9-9.

Application of this section to the deposit of excess state funds, see § 27-105-33.

Eligibility for becoming county depository by deposit of securities listed in this section, see § 27-105-315.

Housing bonds, etc., as security for public funds in depositories, see § 43-33-305.

Deposit of penitentiary funds, see §§ 47-5-77, 47-5-155.

Farm credit securities, see § 75-69-3.

Federal Aspects — Federal Reserve System, see 12 USCS § 221 et seq.

Federal Deposit Insurance Corporation (FDIC), see 12 USCS § 1811 et seq.

Issuance of net worth certificates, see 12 USCS § 1823(i).

ATTORNEY GENERAL OPINIONS

United States government guaranteed securities are primary securities authorized under this section to be pledged as collateral for state deposits. Sheppard, Feb. 18, 1993, A.G. Op. #93-0018.

This section is to be read in pari materia with Miss. Code Section 75-8-102 and further interpreted in light of prevailing practice of securities trade industry; thus security as defined by Miss. Code Section 75-8-102 which includes "book entry" securities which otherwise meet all requirements of law satisfies physical custody requirements of this section, if book entry reflects pledge of securities to state as collateral for state deposits held by owner of security. Sheppard, Feb. 18, 1993, A.G. Op. #93-0018.

The Legislature intended that this section and § 27-105-301, et seq. establish a comprehensive scheme for the safekeeping and investment of county funds. James, August 16, 1996, A.G. Op. #96-0503.

The Legislature clearly intended that out-of-state banks establishing and maintaining one or more branches in Mississippi as authorized by the Interstate Bank Branching Act of 1996 should be allowed to carry out any activities at such branches as Mississippi state banks do; thus, an out-of-state bank with branches located in Mississippi may qualify as a state depository. Bennet, January 16, 1998, A.G. Op. #97-0842.

The board of trustees of a county school district may accept from a qualified financial institution as pledged security for school funds placed in such institution, surety bonds of any surety company authorized to do business in Mississippi, provided that such bonds are not rated substandard by any of the appropriate supervisory authorities having jurisdiction over such depository or by any recognized national rating agency engaged in the business of rating bonds; however, the board should be aware that surety bonds are not negotiable instruments which can be sold to recover lost deposits. Dickey, June 18, 1999, A.G. Op. #99-0287.

The Southern Mississippi Planning and Development District is not a governmental unit for purposes of the statute. Abbott, Jr., Oct. 26, 2001, A.G. Op. #01-0648.

Under subsection (8), it is the responsibility of the bank to deposit additional collateral within one day when it becomes aware that the amount on deposit is no longer adequately secured; it is also the responsibility of the depositor to make the bank aware that it has deposited an amount which is significantly large; however, it is the responsibility of the treasurer to make certain that there is adequate collateral to secure the deposits. Ross, Jr., June 7, 2002, A.G. Op. #02-0262.

Absent specific statutory authority to have funds collateralized, a public entity may not participate in the centralized pledging system. Bennett, June 21, 2002, A.G. Op. #02-0307.

Planning and development districts are not governmental units for purposes of the statute. Bennett, June 21, 2002, A.G. Op. #02-0307.

The North Tunica County Fire Protection District is required to give notice and solicit bids for selection of depositories and is required to have securities pledged for all its deposits. Dulaney, July 10, 2002, A.G. Op. #02-0210.

Public entities are required to enter into a Collateral Security Agreement with the State Treasurer acting as the signatory to effect the intent of Section 27-105-5. Ross, Feb. 28, 2003, A.G. Op. #03-0694.

Forfeited funds in the possession of a district attorney may be deposited in any financial institution that has qualified as a public funds depository in accordance with Section 27-105-5, and such funds may be invested in any of the investments authorized in Section 27-105-33. Davis, Apr. 28, 2006, A.G. Op. 06-0138.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 13, 14.

15A Am. Jur. Legal Forms 2d, Public Funds, §§ 211:34-211:38.

CJS. 26A C.J.S., Depositaries §§ 62-90.

§ 27-105-6. Further qualification as public funds depository participating in public funds guaranty pool.

(1) There is established within the State Treasury a public funds guaranty pool to consist of qualified public funds depositories commissioned under Section 27-105-5(2) to be administered by a Guaranty Pool Board and the State Treasurer.

(2) There is established a nine-member Guaranty Pool Board to administer the guaranty pool and to review and recommend criteria to be used by the State Treasurer in order to protect public deposits and the depositories in the program.

(3) Any financial institution qualifying as a guaranty pool member shall guarantee public fund deposits against loss caused by the default or insolvency of other guaranty pool members and shall execute under oath an agreement of contingent liability in addition to a public deposit pledge agreement.

(4) In addition to maintaining the capital requirements of Section 27-105-5, a guaranty pool member shall meet and maintain, on a quarterly basis, at least two (2) of the following ratios:

(a) A ratio of loans past due ninety (90) days or more to total loans of less than two percent (2%);

(b) An annualized return on average assets of more than seventy-five one hundredths of one percent (0.75%); and

(c) A total loans to total assets ratio not exceeding eighty percent (80%).

Failure of a guaranty pool member to meet the capital ratio and at least two (2) of the above three (3) ratios shall subject the member to subsection (9) of this section.

(5) In fulfilling the requirements of this section, the Treasurer has the power to:

(a) Order discontinuance of participation in the guaranty pool program by a qualified public depository upon failure of the financial institution to meet the above requirements of subsection (4) of this section;

(b) Appoint a nine-member Guaranty Pool Board;

(c) Establish goals and objectives and provide other data as may be necessary to assist the Guaranty Pool Board established under subsection (2) in developing standards for the program;

(d) Perform financial analysis of any qualified public funds depository as needed.

(6) The Guaranty Pool Board shall consist of:

(a) One (1) representative of financial institutions with assets of One Billion Dollars ($1,000,000,000.00) or more chosen by the State Treasurer from a list of two (2) bankers nominated by the Mississippi Bankers Association;

(b) One (1) representative of financial institutions with assets of Three Hundred Million Dollars ($300,000,000.00) but less than One Billion Dollars ($1,000,000,000.00) chosen by the State Treasurer from a list of two (2) bankers nominated by the Mississippi Bankers Association;

(c) One (1) representative of financial institutions with assets of less than Three Hundred Million Dollars ($300,000,000.00) chosen by the State Treasurer from a list of two (2) bankers nominated by the Mississippi Bankers Association;

(d) Two (2) representatives of banks at large chosen by the State Treasurer from a list of four (4) bankers nominated by the Mississippi Bankers Association;

(e) One (1) member chosen by the State Treasurer from a list of two (2) supervisors nominated by the Mississippi Supervisors Association;

(f) One (1) member chosen by the State Treasurer from a list of two (2) municipal officials nominated by the Mississippi Municipal League; and

(g) The Commissioner of Banking and Consumer Finance and the State Treasurer.

The Guaranty Pool Board shall determine the effective date of the public funds guaranty pool, which date shall be no earlier than July 1, 2001, and so notify the State Treasurer. All nominees of the Mississippi Bankers Association shall be employed by a financial institution that is a member of the public funds guaranty pool.

Initially, three (3) of the five (5) representatives of financial institutions shall be appointed for a term of one (1) year. The remaining members other than the Commissioner of Banking and Consumer Finance and State Treasurer, who shall be permanent members, shall be appointed for a term of two (2) years. Upon expiration of these terms, members shall be appointed thereafter for two-year terms. Any member is eligible for reappointment and shall serve until a successor qualifies. If a vacancy occurs in the position of any appointed member, a new member shall be appointed in the same manner as the member's predecessor for the remainder of the unexpired term. A member of the board shall receive no compensation for service on the board.

The Guaranty Pool Board shall elect a chair and vice chair and shall also designate a secretary who need not be a member of the Guaranty Pool Board. The secretary shall keep a record of the proceedings of the Guaranty Pool Board and shall be the custodian of all printed materials filed with or by the advisory committee. Notwithstanding the existence of vacancies on the Guaranty Pool Board, a majority of the members constitutes a quorum. The Guaranty Pool Board shall not take official action in the absence of a quorum.

In addition to the requirements of subsection (4) of this section, the Guaranty Pool Board, by a two-thirds (2/3) supermajority vote of the entire Guaranty Pool Board, may establish additional criteria for qualification as a guaranty pool member, including promulgating additional ratios, requiring stricter ratios than provided under subsection (4), or requiring additional collateral; however, any additional criteria shall be uniformly applied to all participants, although higher collateral pledge levels may be based on different financial criteria. Any reduction in previously approved criteria shall likewise be subject to a two-thirds (2/3) supermajority vote of the entire Guaranty Pool Board. Any additional criteria will become effective at the quarter next after the Guaranty Pool Board votes. The Guaranty Pool Board is authorized to promulgate regulations in order to more fully carry out its obligations under this paragraph.

(7) A public funds guaranty pool member shall submit to the State Treasurer not later than the date required to be filed with its primary federal regulatory agency:

(a) A copy of the quarterly Consolidated Reports of Condition and Income, and any amended reports, required by the Federal Deposit Insurance Act, 12 USCS Section 1811 et seq., if the depository is a bank; or

(b) A copy of the Thrift Financial Report, and any amended reports, required to be filed with the Office of Thrift Supervision if the depository is a savings and loan association.

(8) A public funds guaranty pool member may effect a voluntary withdrawal from the guaranty pool by giving written notice to the State Treasurer. Notice of withdrawal shall be mailed or delivered in sufficient time to be received by the State Treasurer at least one hundred eighty (180) days before the effective date of withdrawal. On the effective date of withdrawal, the guaranty pool member shall pledge and place on deposit with the State Treasurer securities equal to one hundred five percent (105%) of the outstanding balances of public funds held less the amount of funds insured by the Federal Deposit Insurance Corporation.

The contingent liability for any loss before the effective date of withdrawal of the depository withdrawing from the guaranty pool shall continue after the effective date of the withdrawal for a period of six (6) months.

(9) A public funds guaranty pool member failing to meet the requirements for membership in subsection (4) of this section or as modified by the Guaranty Pool Board under its authority at subsection (6) is required to withdraw from the guaranty pool. The State Treasurer shall notify the public funds guaranty pool member of the effective date of the withdrawal not less than thirty (30) days before that effective date. Not later than the effective date of withdrawal, the withdrawing pool member must pledge and place on deposit with the State Treasurer securities equal to one hundred five percent (105%) of the outstanding balances of public funds held less the amount of funds insured by the Federal Deposit Insurance Corporation or pay over those funds to the public depositor.

The contingent liability for any loss before the effective date of withdrawal of the depository withdrawing from the guaranty pool shall continue for a period of one (1) year after the effective date of the withdrawal.

SOURCES: Laws, 2000, ch. 408, § 2, eff from and after passage (approved Apr. 17, 2000.)

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Federal Aspects — Federal Deposit Insurance Corporation, see 12 USCS § 1811 et seq.

§ 27-105-7. Bonds offered for security; how dealt with.

The Governor, Attorney General and auditor are authorized to cancel any coupon state bonds payable to bearer and to issue registered bonds in lieu thereof whenever such state bonds are offered as security for deposit. They shall make a full report of all such cancellations and issuance of new bonds, describing fully the bonds cancelled and the new bonds issued, and report same to the next succeeding legislative session.

SOURCES: Codes, Hemingway's 1917, § 4193; 1930, § 4327; 1942, § 9129; Laws, 1908, ch. 96.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 15 et seq.

§ 27-105-9. Application for keeping state funds; pro rata allocation.

The State Treasurer shall give notice of the provisions of this article once a month to each eligible bank and financial institution in the state having an amount of state funds less than the amount authorized to be allocated to the bank or financial institution under Section 27-105-33 and this section, and shall receive such applications as they or any of them may make for the privilege of keeping any part of public funds on forms to be furnished by the Treasurer, and shall place the state funds with the institutions applying for them if the depository application has been duly approved by the Treasurer.

The Treasurer, when considering the various depository applications, shall review the financial statement of the applying depository and become satisfied regarding its liquidity and capital ratio so as to assure the safety of all public funds, and likewise to give the equitable apportionment of the state funds throughout the state.

State funds required for current operation, as determined under Section 27-105-33, shall be deposited in one or more demand accounts. State funds not required for current operation, as determined under Section 27-105-33, shall be deposited in one or more interest-bearing accounts or time certificates of deposit, or otherwise invested under Section 27-105-33. When any depository holding state demand accounts receives an order from the Treasurer or his designee to transfer collected funds out of those accounts to any interest-bearing accounts or time certificates of deposit in the depository or any other depository under the provisions of this chapter, the transfer shall be made immediately or as soon thereafter as practicable. If the Treasurer finds that any depository is not transferring funds as provided above, the depository shall be disqualified from holding or receiving any state demand accounts for a period of time not to exceed one (1) year.

All funds allocated to approved depositories under the provisions of subsection (b) of Section 27-105-33 shall be allocated to qualified depositories of the state on a pro rata basis determined as follows:

(a) Each qualified depository shall be assigned a numerator, which shall be the sum of (i) thirty-five percent (35%) of that portion of its Mississippi-based deposits that does not exceed Two Hundred Fifty Million Dollars ($250,000,000.00), plus (ii) twenty-five percent (25%) of that portion of its Mississippi-based deposits that exceed Two Hundred Fifty Million Dollars ($250,000,000.00) but does not exceed Five Hundred Million Dollars ($500,000,000.00), plus (iii) fifteen percent (15%) of that portion of its Mississippi-based deposits that exceeds Five Hundred Million Dollars ($500,000,000.00).

(b) Each such numerator shall be divided by a denominator, which shall be the sum of (i) thirty-five percent (35%) of the first Two Hundred Fifty Million Dollars ($250,000,000.00) or portion thereof of the Mississippi-based deposits of each qualified depository, plus (ii) twenty-five percent (25%) of the next Two Hundred Fifty Million Dollars ($250,000,000.00) or portion thereof of the Mississippi-based deposits of each qualified depository, plus (iii) fifteen percent (15%) of the Mississippi-based deposits of each qualified depository in excess of Five Hundred Million Dollars ($500,000,000.00), being the sum of the numerators of all depositories. The resulting percentage shall be the pro rata share of the depository in funds allocated under Section 27-105-33(b).

(c) All such computations shall be determined annually by December 1 on the basis of the deposits held by the depositories at deposit facilities located in the State of Mississippi as reported in the Federal Deposit Insurance Corporation's Market Share Report — Deposits of All FDIC-Insured Institutions Operating in Mississippi on June 30 of each year. For the purposes of this section, "Mississippi-based deposits" means the total deposits held at deposit facilities located in the State of Mississippi on June 30 as reported annually by the Federal Deposit Insurance Corporation in the above-referenced report.

State funds allocated to each approved depository shall not be more than four percent (4%) of the depository's Mississippi-based deposits. Interest-bearing time certificates of deposit and other interest-bearing deposits, either general or special, made under Section 27-105-33, may be treated as not coming within this percentage if, in the discretion of the Treasurer, the best interest of the state can be served to increase its earnings and decrease its expenses in the handling of the state funds; however, any and all depositories must first qualify and be approved by the Treasurer to receive demand deposits subject to withdrawal or transfer by check of the Treasurer when properly presented and so demanded. For the purposes of this section, the term "paid-in and earned capital funds" means the sum of common stock, perpetual preferred stock, surplus, undivided profits and capital reserves as these amounts are or would be reflected in a Federal Deposit Insurance Corporation (FDIC) banking institution's "Reports of Condition and Income" (Call Reports), regardless of whether the institution is insured by the FDIC.

The state depository contract shall be for one (1) year, but may be renewed from year to year upon proper review and approval of the Treasurer. Each applicant shall furnish to the Treasurer a financial statement sworn to by a duly elected officer, and on such date or dates as the Treasurer may provide.

SOURCES: Codes, Hemingway's 1917, § 4194; 1930, § 4328; 1942, § 9130; Laws, 1908, ch. 96; Laws, 1932, ch. 295; Laws, 1938, ch. 182; Laws, 1969 Ex. Sess., ch. 53, § 7; Laws, 1979, ch. 417, § 10; Laws, 1988, ch. 473, § 3; Laws, 1995, ch. 321, § 1; Laws, 1999, ch. 404, § 2; Laws, 2000, ch. 408, § 3, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Application of this section to the deposit of excess state funds, see § 27-105-33.

Federal Aspects — Federal Deposit Insurance Corporation (FDIC), see 12 USCS § 1811 et seq.

§ 27-105-11. Commission issued depository.

After a bank has in every respect complied with the law and shall have placed security as required, the governor, attorney general and treasurer shall issue to such depository a commission. The term of office of the depository shall be one year from the date of the issuance of its commission.

SOURCES: Codes, Hemingway's 1917, § 4195; 1930, § 4329; 1942, § 9131; Laws, 1908, ch. 96.

Cross References — Qualification as, and deposits by, a state depository, see § 27-105-5.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 5 et seq.

§ 27-105-13. Commission form.

The State Depository Commission shall design and stipulate the wording of the form of commission to be issued to each and every duly approved depository for public funds and the form of commission, when so approved, shall be spread on the minutes of the State Depository Commission showing its approval, and the form of commission shall recite the terms and conditions of the depository contract based on the law and the regulations. The State Depository Commission is authorized to amend and/or rewrite the form of commission to be used from time to time as the need arises. The form of commission, when issued to a duly qualified and approved depository, shall be signed by the Secretary of the State Depository Commission and a copy of the approvals shall be kept for a period of three (3) years before being destroyed.

SOURCES: Codes, Hemingway's 1917, § 4196; 1930, § 4330; 1942, § 9132; Laws, 1908, ch. 96; Laws, 1938, ch. 182; Laws, 1969 Ex. Sess., ch. 53, § 8; Laws, 2000, ch. 408, § 4, eff from and after July 1, 2001.

Editor's Note — Section 27-105-1 provides that wherever the term "State Depository Commission" appears in any law, the same shall mean the State Treasurer.

Laws, 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

§ 27-105-15. Record of proceedings.

The commission shall keep a written record in a well bound book of all its actions, and the record shall show the vote of each member on all matters. The governor and one other member of the commission shall constitute a quorum for the transaction of any and all business of the commission.

SOURCES: Codes, 1942, § 9133; Laws, 1938, ch. 182.

§ 27-105-17. Employees; regulations.

The commission hereby created shall have authority to adopt and promulgate such rules and regulations as may be reasonable and proper to properly and effectively carry out the purpose of this article. The commission shall elect a secretary from its membership, or otherwise, who shall also be bookkeeper for the commission, and it shall be the duty of the secretary to keep the minutes of said commission, and to keep such books, accounts and records with the various depositories as the commission may direct. The secretary shall also, from time to time, as may be ordered by the commission, make report showing the true and complete condition of all depository accounts, and he shall also report to the commission, at any time, any and all important matters which, in his judgment, should receive special action. The secretary shall receive a salary of six hundred dollars ($600.00) per annum for this service, in addition to any other compensation he may be entitled to.

SOURCES: Codes, 1942, § 9134; Laws, 1938, ch. 182.

§ 27-105-19. All moneys received to be receipted for in triplicate.

When any payment shall be made into the state depository in pursuance of this article, the depository shall give the person making such payment triplicate receipts specifying the account on which the payment is made, one of which shall be immediately mailed to the state treasurer and one of which shall be mailed to the auditor of public accounts.

SOURCES: Codes, Hemingway's 1917, § 4197; 1930, § 4431; 1942, § 9135; Laws, 1908, ch. 96.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 27-105-21. Deposits at interest of certain funds with state depositories; reports.

All institutions and departments which withdraw funds from the State Treasury, all agencies and departments of the state government whose funds are not deposited in the State Treasury, and all agencies and departments of the state government which maintain imprest funds are hereby authorized, empowered and directed to deposit their funds, except and less an amount approved by the auditor which shall be sufficient to cover disbursements for current operations, at interest with any qualified depository of the state at a rate of interest numerically equal to or greater than one-half of one percent (½ of 1%) below the bank discount rate on United States Treasury bills of comparable maturity as determined by the State Depository Commission. Such institutions and departments may, to the extent that they are unable to invest in certificates of deposit for periods of fourteen (14) days or longer at a rate numerically equal to or greater than one-half of one percent (½ of 1%) below the treasury bill rate, deposit funds in sums of less than One Hundred Thousand Dollars ($100,000.00) in such other type of interest-bearing account as may be now or hereafter authorized by law. Interest earned on funds withdrawn from the General Fund shall be deposited in the General Fund; interest earned on other funds shall be deposited to the fund from which the investment was made, unless otherwise required by law. Any agency not reporting through the State Treasurer's office shall file with the Legislature an annual report showing monthly balances, monthly investments and interest earned for the preceding fiscal year or part thereof. A depository holding funds pursuant to this section shall be eligible to hold such funds to the extent that it is qualified as a depository for state funds.

SOURCES: Codes, 1942, § 9126.5; Laws, 1969 Ex. Sess., ch. 53, § 4; Laws, 1979, ch. 417, § 11; Laws, 1981, ch. 481, § 1; Laws, 1988, ch. 473, § 4, eff from and after December 1, 1988.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Funds invested by Mississippi Opportunity Loan Fund subject to requirements of this section, see § 37-145-7.

ATTORNEY GENERAL OPINIONS

Section 27-105-21 requires interest earned by the investment of general fund monies be returned to the general fund. Yoste, August 7, 1995, A.G. Op. #95-0519.

§ 27-105-23. How tax collectors may make settlements.

In making settlements with the auditor of public accounts, the tax collector of each county shall pay the amount due the state over to a state depository in his county, if there be one in his county, otherwise he shall make payment in some other state depository, most convenient and authorized to receive same, and if none convenient, he shall pay the same to the state treasurer as now provided by law. The tax collector in making deposits shall receive triplicate receipts for the same and shall mail the auditor of public accounts and the treasurer each a copy thereof.

SOURCES: Codes, Hemingway's 1917, § 4198; 1930, § 4332; 1942, § 9136; Laws, 1908, ch. 96.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Tax collector's monthly report of state, county and levee taxes collected, see § 27-29-11.

Tax collector's deposit of local tax collections in county depository, see §§ 27-105-325, 27-105-337.

§ 27-105-25. Failure to pay treasurer's check.

(1) In the event of the failure of any public funds depository to pay any check lawfully issued by the State of Mississippi or any agency or department of the state or any county, municipality or other governmental unit on any funds on deposit belonging to the State of Mississippi or any agency or department of the state or any county, municipality or other governmental unit

in the depository, the State Treasurer is empowered to sell such securities as are placed with him by the depository, or so much of them as is necessary to cover back into the Treasury of the State of Mississippi or any agency or department of the state or any county, municipality or other governmental unit the amount of state funds on deposit with the depository with accrued interest thereon in excess of applicable deposit insurance, and the sale of the securities shall be made by the State Treasurer at the best price that he can obtain at either public or private sale, and in the event of the failure of the depository to pay any check when the depository has placed as security surety bonds, the Treasurer shall notify the Attorney General and that officer shall take such immediate action as he may deem most expedient for covering back into the Treasury of the State of Mississippi or any agency or department of the state or any county, municipality or other governmental unit all state money on deposit in the depository. In addition, the Attorney General is authorized to employ counsel, if necessary, to more speedily enforce the payment and expense of that collection, including counsel fees, to be charged against the depository, and, in addition thereto, the depository will be liable for damages at the rate of one percent (1%) per month for any delay in paying over any state funds when demanded, and the bond of any depository shall be liable for those expenses and damages.

(2) If the loss to the State of Mississippi or any agency or department of the state or any county, municipality or other governmental unit (hereinafter "public depositors") of the depository that is also a public funds guaranty pool member is not covered by deposit insurance or the proceeds of the sale of securities, the State Treasurer shall provide coverage of the remaining loss by assessment against the other public funds guaranty pool members. The assessment shall be determined by multiplying the total amount of the loss to all public depositors by a percentage that represents the share of public fund deposits held by the depository divided by the total public deposits held by all public funds guaranty pool members, excluding the public deposits of the defaulting depository, as determined by the State Treasurer from the average of the six (6) most recent month-end reports of the public funds guaranty pool members provided under Section 27-105-6. Each public funds guaranty pool member shall pay its assessment to the State Treasurer within seven (7) business days after it receives notice of the assessment. If a public funds guaranty pool member fails to pay its assessment when due, the State Treasurer shall satisfy the assessment by selling securities pledged by any depository failing to pay the assessment.

(3) The State Treasurer shall distribute the funds to the public depositors of the public funds depository in default according to their validated claims.

(4) Public depositors receiving payment under the provisions of this section shall assign to the State Treasurer any interest they may have in funds that may subsequently be made available to the depository in default, if the depository in default or its receiver provides funds to the State Treasurer, the State Treasurer shall distribute the funds, plus all accrued interest that has accumulated from the investment of the funds, if any, to the public funds

guaranty pool members that paid assessments on the same pro rata basis as the assessments were paid.

SOURCES: Codes, Hemingway's 1917, § 4201; 1930, § 4334; 1942, § 9137; Laws, 1908, ch. 96; Laws, 2000, ch. 408, § 5, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Payment of state deposits by state depositories generally, see § 7-9-37.

Public funds guaranty pool, see § 27-105-6.

Failure of county depository to pay warrants drawn on public funds, see § 27-105-329.

ATTORNEY GENERAL OPINIONS

The state is not the guarantor of funds; a public entity's remedy is to have the State Treasurer sell the securities and/or to employ counsel to enforce payment. Ross, Jr., June 7, 2002, A.G. Op. #02-0262.

§ 27-105-27. Loan of state funds unlawful or removal of same a felony.

The making of profit, directly or indirectly, by the State Treasurer, tax collector, treasurer of any board of trustees, or any officers whatsoever, out of any money belonging to the state, with the custody of which the state treasurer is charged, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or a removal by the State Treasurer, or by his consent, of such money or a part thereof, and placing it elsewhere than as provided by law, shall constitute a felony, and, on conviction thereof, shall subject the treasurer or other officer to imprisonment in the state penitentiary for a term not exceeding two (2) years or a fine not exceeding five thousand dollars ($5,000.00), or by both such fine and imprisonment; and the treasurer or other officer offending shall be liable upon his official bond for all profits realized from such unlawful use of such funds.

SOURCES: Codes, Hemingway's 1917, § 4202; 1930, § 4335; 1942, § 9138; Laws, 1908, ch. 96.

Cross References — Penalty for trafficking in county funds, see § 27-105-345.

Embezzlement by public officers and employees, see §§ 97-11-25 to 97-11-31.

Criminal offense of gambling by public officers, see § 97-33-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 3.

CJS. 26A C.J.S., Depositaries § 53.

§ 27-105-29. Failure to perform duty under this article a misdemeanor.

If any officer, treasurer of board of trustees, or other custodian of the state's money shall wilfully fail or refuse, at any time, to do or perform any act required of him by this article, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand dollars ($5,000.00).

SOURCES: Codes, Hemingway's 1917, § 4203; 1930, § 4336; 1942, § 9139; Laws, 1908, ch. 96.

Cross References — Penalty for public officer's refusal or failure to perform duty as to local government funds, see § 27-105-347.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 29.

CJS. 26A C.J.S., Depositaries § 53.

§ 27-105-31. Governor and treasurer to count depository receipts as cash.

When the Governor of the State of Mississippi and the State Treasurer are each individually performing their respective duties as required by Article 5, Section 137 of the Mississippi Constitution of 1890 [Section 137 repealed], each shall recognize, treat, and count receipts of all duly qualified state depositories for demand, general and special funds of the State Treasury, interest-bearing time certificates of deposit issued by duly qualified state depositories, and safekeeping trust receipts representing investments in direct United States Treasury obligations, as cash funds in the treasury.

SOURCES: Codes, Hemingway's 1917, § 4204; 1930, § 4337; 1942, § 9140; Laws, 1908, ch. 96; Laws, 1969 Ex. Sess., ch. 53, § 2, eff from and after December 31, 1969.

Editor's Note — Former Section 137 of Article 5 of the Mississippi Constitution required that the State Treasurer publish in a newspaper located at the seat of government, within ten days of the first of January and July of each year, a statement of the condition of the treasury including the balance on hand and information concerning the nature of the funds, and required that the Governor verify the count by inspection and certification.

The 1990 repeal of Section 137 of Article 5 of the Mississippi Constitution was proposed by Laws of 1990, Ch. 695 (Senate Concurrent Resolution No. 562), and upon ratification by the electorate on November 6, 1990, was deleted from the Constitution by proclamation of the Secretary of State on December 19, 1990.

Cross References — Duty of governor to count money in treasury, see § 7-1-43.

§ 27-105-33. Deposit and investment of excess state funds.

It shall be the duty of the State Treasurer and the Executive Director of the Department of Finance and Administration on or about the tenth day of each month, and in their discretion at any other time, to analyze carefully the amount of cash in the General Fund of the state and in all special funds credited to any special purpose designated by the State Legislature or held to meet the budgets or appropriations for maintenance, improvements and services of the several institutions, boards, departments, commissions, agencies, persons or entities of the state, and to determine in their opinion when the cash in such funds is in excess of the amount required to meet the current needs and demands of no more than seven (7) business days on such funds and report their findings to the Governor. It shall be the duty of the State Treasurer to provide a cash flow model for forecasting revenues and expenditures on a bimonthly basis and providing technical assistance for its operation. The Department of Finance and Administration shall use the cash flow model furnished by the State Treasurer, in analyzing the amount of funds on deposit and available for investment.

The State Treasurer is hereby authorized, empowered and directed to invest all such excess general and special funds of the state in the following manner:

(a) Funds shall be allocated equally among all qualified state depositories which do not have demand accounts in excess of One Hundred Fifty Thousand Dollars ($150,000.00) until each qualified depository willing to accept the same shall have on deposit or in security repurchase agreements or in other securities authorized in paragraph (d) of this section at interest the sum of Three Hundred Thousand Dollars ($300,000.00). For the purposes of this subsection, no branch bank or branch office shall be counted as a separate depository.

(b) The balance, if any, of such excess general and special funds shall be offered to qualified depositories of the state on a pro rata basis as provided in Section 27-105-9. For the purposes of this subsection, the pro rata share of each depository shall be reduced by the amount of the average daily collected earning balance of demand deposits maintained by the State Treasurer pursuant to Section 27-105-9 during the preceding calendar year, and such reduction shall be allocated pro rata among other eligible depositories.

(c) Funds offered pursuant to paragraphs (a) and (b) above shall be invested for periods of up to one (1) year, and shall bear interest at an interest rate no less than that numerically equal to the bond equivalent yield on direct obligations of the United States Treasury of comparable maturity, as determined by the State Treasurer. In determining such rate, the State Treasurer shall consider the Legislature's desire to distribute funds equitably throughout the state to the maximum extent possible.

(d) To the extent that the State Treasurer shall find that general and special funds cannot be invested pursuant to paragraphs (a), (b) and (c) of this section for the stated maturity up to one (1) year, the Treasurer may invest such funds, together with any other funds required for current operation, as determined pursuant to this section, in the following:

(i) Time certificates of deposit or interest-bearing accounts with qualified state depositories. For those funds determined under prudent judgment of the State Treasurer to be made available for investment in time certificates of deposit, the rate of interest paid by the depositories shall be determined by rules and regulations adopted and promulgated by the State Treasurer which may include competitive bids. At the time of investment, the interest rate on such certificates of deposit under the provisions of this subparagraph shall be a rate not less than the bond equivalent yield on direct obligations of the United States Treasury with a similar length of maturity.

(ii) Direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the government of the United States.

(iii) United States government agency, United States government instrumentality or United States government sponsored enterprise obligations, the principal and interest of which are fully guaranteed by the government of the United States, such as the Government National Mortgage Association; or United States governmental agency, United States government instrumentality or United States government sponsored enterprise obligations, the principal and interest of which are guaranteed by any United States government agency, United States government instrumentality or United States government sponsored enterprise contained in a list promulgated by the State Treasurer.

(iv) Direct security repurchase agreements and reverse direct security repurchase agreements of any federal book entry of only those securities enumerated in subparagraphs (ii) and (iii) above. "Direct security repurchase agreement" means an agreement under which the state buys, holds for a specified time, and then sells back those securities and obligations enumerated in subparagraphs (ii) and (iii) above. "Reverse direct securities repurchase agreement" means an agreement under which the state sells and after a specified time buys back any of the securities and obligations enumerated in subparagraphs (ii) and (iii) above. At least eighty percent (80%) of the total dollar amount in all repurchase agreements at any one time shall be pursuant to contracts with qualified state depositories.

(e) For the purposes of this section, direct obligations issued by the United States of America shall be deemed to include securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions of 15 USCS Section 80(a)-1 et seq., provided that the portfolio of such investment company or investment trust is limited to direct obligations issued by the

United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and to repurchase agreements fully collateralized by direct obligations of the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and the investment company or investment trust takes delivery of such collateral for the repurchase agreement, either directly or through an authorized custodian. The State Treasurer and the Executive Director of the Department of Finance and Administration shall review and approve the investment companies and investment trusts in which funds invested under paragraph (d) of this section may be invested. The total dollar amount of funds invested in all open-end and closed-end management type investment companies and investment trusts at any one time shall not exceed twenty percent (20%) of the total dollar amount of funds invested under paragraph (d) of this section.

(f) Investments authorized by subparagraphs (ii) and (iii) of paragraph (d) shall mature on such date or dates as determined by the State Treasurer in the exercise of prudent judgment to generate a favorable return to the state and will allow the monies to be available for use at such time as the monies will be needed for state purposes. However, the maturity of securities purchased as enumerated in subparagraphs (ii) and (iii) shall not exceed ten (10) years from date of purchase. Special funds shall be considered those funds created constitutionally, statutorily or administratively which are not considered general funds. All funds invested for a period of thirty (30) days or longer under paragraph (d) shall bear a rate at least equal to the current established rate under paragraph (c) of this section.

(g) Any interest-bearing deposits or certificates of deposit shall not exceed at any time the amount insured by the Federal Deposit Insurance Corporation in any one (1) banking institution, the Federal Savings and Loan Insurance Corporation in any one (1) savings and loan association, or other deposit insurance corporation approved by the State Treasurer, unless the uninsured portion is collateralized by the pledge of securities in the manner provided by Section 27-105-5.

(h) Unless otherwise provided, income from investments authorized by the provisions of this subsection shall be credited to the State General Fund.

(i) Not more than Five Hundred Thousand Dollars ($500,000.00) of funds may be invested with foreign financial institutions, and the State Treasurer may enter into price contracts for the purchase or exchange of foreign currency or other arrangements for currency exchange in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) upon specific direction of the Department of Economic and Community Development. The State Treasurer shall promulgate all rules and regulations for applications, qualifications and any other necessary matters for foreign financial institutions.

Any liquidating agent of a depository in liquidation, voluntary or involuntary, shall redeem from the state any bonds and securities which have been pledged to secure state funds and such redemption shall be at the par value or market value thereof, whichever is greater; otherwise, the liquidating agent or receiver may pay off the state in full for its deposits and retrieve the pledged securities without regard to par or market value.

The State Treasurer and the Executive Director of the Department of Finance and Administration shall make monthly reports to the Legislative Budget Office containing a full and complete statement of all funds invested by virtue of the provisions of this section and the revenues derived therefrom and the expenses incurred therewith, together with all such other information as may seem to each of them as being pertinent to inform fully the Mississippi Legislature with reference thereto.

The State Treasurer shall not deposit any funds on demand deposit with any authorized depository, unless such depository has contracted for interest-bearing accounts or time certificates of deposit.

Notwithstanding the foregoing, any financial institution not meeting the prescribed ratio requirement set forth in Section 27-105-5 whose accounts are insured by the Federal Deposit Insurance Corporation, or any successor to that insurance corporation, may receive state funds in an amount not exceeding the amount which is insured by such insurance corporations and may qualify as a state depository to the extent of such insurance for this purpose only. The paid-in and earned capital funds of such financial institution shall not be included in the computations specified in Section 27-105-9(a) and (b).

SOURCES: Codes, 1930, § 4338; 1942, § 9141; Laws, 1928, Ex. Sess., ch. 79; Laws, 1938, ch. 182; Laws, 1969 Ex. Sess., ch. 53, § 3; Laws, 1972, ch. 443, § 1; ch. 469, § 1; Laws, 1974, ch. 563, § 2; Laws, 1979, ch. 417, § 12; Laws, 1981, ch. 481, § 2; Laws, 1984, ch. 488, § 180; Laws, 1986, ch. 470; Laws, 1988, ch. 473, § 5; Laws, 1988, ch. 518, § 18; Laws, 1989, ch. 540, § 2; Laws, 1989, ch. 544, § 163; Laws, 1990, ch. 570, § 2; Laws, 1992, ch. 367, § 2; Laws, 1992, ch. 484, § 17; Laws, 1993, ch. 436, § 1; Laws, 1995, ch. 321, § 2; Laws, 2014, ch. 401, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 1989, ch. 540, § 5, effective July 1, 1989, provides as follows:

"SECTION 5. All rules and regulations adopted and promulgated pursuant to this act by the State Treasurer shall be submitted to the Executive Director of the Department of Finance and Administration for approval prior to their implementation."

The Iran Divestment Act of 2015 (Sections 27-106-1 through 27-106-25) prohibits the Public Employees' Retirement System and the State Treasurer from investing funds with a person engaging in certain investment activities in Iran.

Cross References — Investment of excess funds from the Working Cash-Stabilization Reserve Fund in securities as authorized by this section, see § 27-103-203.

State Treasurer to deposit all funds as prescribed in this section, see § 27-105-1.

Deposit of funds under this section, see § 27-105-9.

Investment of certain funds, see § 31-19-5.

Fisheries and wildlife fund, investment or deposit in, see § 49-5-21.

Application of this section to the Game and Fish Commission Motor Vehicle and Boat Fund, see § 49-6-3.

Bonds of Business Finance Corporation as legal investments for governmental bodies, see § 57-10-257.

Applicability of this section to excess funds from Tennessee-Tombigbee Waterway bond retirement fund and bridge construction fund, see §§ 65-26-9 and 65-26-25.

Federal Aspects — Federal Deposit Insurance Corporation, see 12 USCS § 1811 et seq.

Regulation of investment companies, see 15 USCS § 80a-1 et seq.

ATTORNEY GENERAL OPINIONS

Endowment funds donated directly to universities, as opposed to funds contributed to private development foundations established to raise money for universities, are public trust funds for which the Board of Trustees of State Institutions of Higher Learning (IHL) may be held liable in case of any loss of funds. For this reason, the IHL should consider limiting the investment of such funds to the types enumerated in the statutes to protect against possible loss and liability therefor. McLeod, January 16, 1998, A.G. Op. #97-0811.

An investment consultant may be hired to assist a school district with the investment of its surplus funds. Pate, January 15, 1999, A.G. Op. #98-0775.

There is no provision in Miss. Code Ann. § 69-44-1 et seq., addressing the interest earned on funds in the Mississippi Corn Promotion Fund. Absent a specific provision otherwise, interest earned on funds in the Mississippi Corn Promotion Fund must be credited to the State General Fund. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 46, 51.

CJS. 81A C.J.S., States §§ 374-376.

§ 27-105-35. Commission meetings and duties.

The state depository commission, composed of the Governor, Attorney General, and State Treasurer, shall meet annually in the month of February, and more often, if necessary, on call of any member of the commission. The commission shall keep a full and correct record of its proceedings, and is authorized and required to:

(a) Approve, upon proper application, the depositories for the State of Mississippi that are qualified to receive and hold, subject to demand, the public funds of the state or any subdivision of the state;

(b) Approve the bonds and securities pledged by the depositories to secure public funds deposits and to approve the exchange or substitution of bonds and securities pledged in lieu of the bonds and securities formerly pledged. The bonds and securities so pledged and held shall be such as are specifically authorized by law for security of public funds deposits;

(c) Approve and fix the margin of security to be maintained by public funds depositories, but in no instance shall the security be less than is specifically required by law;

(d) Approve surety bonds, issued by solvent insurance companies authorized to do business in Mississippi, filed by the depositories to secure public funds deposits, and to approve lawful substitutions in lieu thereof; and

(e) Approve the return and release of excess bonds and securities or surety bonds, due to the withdrawal of public funds from the depositories.

The State Treasurer may be authorized by the commission to:

(i) Receive, transfer, exchange and/or substitute bonds and securities pledged by the depositories to secure public funds deposits; and to accept bonds and securities pledged by the depositories as security for public funds deposits in lieu of any surety bond so held by the commission. However, no bond or security shall be received or accepted as security for public funds deposits unless specifically authorized by law and the marginal requirements of the State Depository Commission.

(ii) Return and release excess bonds and securities and/or surety bonds that are excess over the marginal requirements due to withdrawal of public funds deposits; and

(iii) Make a detailed report of all matters and transactions relating to the depository bonds and securities at such times and as often as may be required by the State Depository Commission. Exchanges and substitutions of bonds and securities shall not be made but once for each depository during any consecutive three-month period; however, called or matured bonds and securities may be exchanged, substituted or released if marginal requirements are maintained, at the pleasure of the State Treasurer and the depository.

SOURCES: Codes, 1942, § 9142; Laws, 1932, ch. 255; Laws, 1946, ch. 303, § 1; Laws, 2000, ch. 408, § 6, eff from and after July 1, 2001.

Editor's Note — Section 27-105-1 provides that wherever the term "State Depository Commission" appears in any law, the same shall mean the State Treasurer.

Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Withdrawal of securities by county depositories, see § 27-105-349.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds, § 14.

§ 27-105-37. Acceptance by banks of checks payable to state agency.

All banks in this state are required to accept all checks and drafts that are payable to any state department, agency, board or commission, only for deposit to the credit of the particular payee to which such checks or drafts are payable, or to issue cashier's checks, certified checks and similar exchange in the name of and on behalf of the particular payee.

SOURCES: Laws, 1974, ch. 372, eff from and after passage (approved March 18, 1974).

Cross References — Acceptance by banks of checks payable to county, municipality, political subdivision or body politic, see § 27-105-369.

Interest on deposits or investments of fisheries and wildlife fund moneys, see § 49-5-21.

General regulations relating to banks and banking, see § 81-5-1 et seq.

Article 3.

Depositories for Funds of Local Governments.

Sec.

27-105-301. Levee district depositories.
27-105-303. Establishment of county depositories.
27-105-305. Publication for bids to keep county funds; content of bids; acceptance of bid; election by board of supervisors to submit certain bids to State Treasurer to determine acceptance of bid; authority of State Treasurer upon receipt of bids from board of supervisors.
27-105-307. When no bids submitted; board to readvertise.
27-105-309. When banks in county fail to respond.
27-105-311. State Treasurer to aid in selection.
27-105-313. Obstructing bids; penalty for.
27-105-315. Qualification as depository.
27-105-317. Commission of depository.
27-105-319. Repealed.
27-105-321. Receipts in triplicate to be issued for deposits; disposition of same.
27-105-323. Detailed reports made to supervisors of receipts and disbursements by depositories.
27-105-325. How tax collectors to settle with county treasury.
27-105-327. Amount to be paid by depositories for privilege of keeping funds; how computed.
27-105-329. Failure to pay county warrants.
27-105-331. Acquisition of closed depository securities.
27-105-333. Alternative method of selecting depositories.
27-105-335. Designation of depository for county by Commissioner of Banking and Consumer Finance.
27-105-337. Tax collector to deposit funds.
27-105-339. Insufficient depository.
27-105-341. Sections 27-105-333 through 27-105-339 cumulative.
27-105-343. Chancery clerks to perform duties of county treasurers.
27-105-345. Traffic in public funds prohibited; penalty therefor.
27-105-347. Penalty.
27-105-349. County withdrawal of bonds pledged or filed as security.
27-105-351. Drainage district funds; how dealt with.
27-105-353. Method of selecting municipal depositories.
27-105-355. Security on bond.
27-105-357. Duties of depository; penalty for making profit or removing funds.
27-105-359. Municipal withdrawal of bonds pledged or filed as security.
27-105-361. Banks failing to qualify, treasurer to be selected or depository designated.
27-105-363. Term of office of depository.
27-105-365. Depository for county and municipal hospital funds; investments.

27-105-367. Surplus funds; transfer to other funds; procedures; petition and election as to certain transfers; retirement of bonds and interest.
27-105-369. Acceptance by banks of checks payable to county, municipality, political subdivision or body politic.
27-105-371. Duty to deposit funds into county depository; disposition of unidentifiable funds; duty of chancery clerk.

§ 27-105-301. Levee district depositories.

The adoption of this code shall not be construed as repealing any law or laws providing for deposits by and loans of the board of commissioners for the Yazoo-Mississippi delta levee district and the board of Mississippi levee commissioners.

SOURCES: Codes, 1930, § 4339; 1942, § 9143.

Cross References — State depositories, see § 27-105-1 et seq.

ATTORNEY GENERAL OPINIONS

Statute does not contemplate or authorize joint bids; such arrangement would appear to frustrate and defeat competitive nature of bidding process for County Depository. Henley, Feb. 14, 1990, A.G. Op. #90-0095.

The Legislature intended that Sections 27-105-5 and 27-105-301, et seq. establish a comprehensive scheme for the safekeeping and investment of county funds. James, August 16, 1996, A.G. Op. #96-0503.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 8 et seq.

CJS. 26A C.J.S., Depositaries § 7 et seq.

§ 27-105-303. Establishment of county depositories.

The amount of money belonging to the several funds in the county treasury of each county in the state which is required to meet the current needs and demands of no more than seven (7) business days shall be kept on deposit in or through qualified financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in or through some of them doing business in the several counties, provided that where there is no such financial institution in a county qualifying as a depository, some such financial institution in an adjoining county may qualify as a depository. All such deposits shall be subject to payment when demanded on warrant issued by the clerk of the board of supervisors on the order of the said board or on the allowance of a court authorized to allow the same. Each financial institution qualifying as such county depository shall not be required to pay interest to the county for the privilege of holding the deposits unless federal law permits the payment of interest on such deposits, in which case the maximum permitted interest rate shall be paid on such deposits. Where more than one (1) financial institution in a county offers to qualify as a depository, the board of supervisors may allocate such money to each qualified financial institution as nearly as practicable in proportion to their respective net worth, and may adopt the rules for receiving such deposits.

SOURCES: Codes, Hemingway's 1917, § 4234; 1930, § 4340; 1942, § 9144; Laws, 1912, ch. 194; Laws, 1946, ch. 422, § 1; Laws, 1985, ch. 514, § 17; Laws, 1988, ch. 473, § 6; Laws, 2007, ch. 426, § 3, eff from and after passage (approved Mar. 22, 2007.)

Cross References — Investment of surplus funds by counties, see § 19-9-29.

Amount to be paid by depository for privilege of keeping county funds on deposit, see § 27-105-327.

Additional method of selecting county depositories, see §§ 27-105-333, 27-105-335.

Deposit of drainage district funds in county depositories, see § 27-105-351.

Municipal depositories, see § 27-105-353.

Depositories for county and municipal hospital funds, see § 27-105-365.

Federal Aspects — Federal Deposit Insurance Corporation, see 12 USCS § 265 and § 1811 et seq.

JUDICIAL DECISIONS

1. In general.

The provision as to allocation of funds in each bank offering to qualify is permissive, not mandatory upon the board of supervisors. Leflore Bank & Trust Co. v. Leflore County, 202 Miss. 552, 32 So. 2d 744 (1947).

Depositories of county funds, though not public officers in constitutional sense, are quasi-public officers. Miller v. Batson, 160 Miss. 642, 134 So. 567 (1931).

Swamp land district funds are not county funds nor drainage district funds and the state revenue agent has not right as against the sheriff to possession thereof. Robertson v. People's Bank & Trust Co., 118 Miss. 650, 79 So. 827 (1918).

Township funds in the hands of the county for disbursement according to law are county funds within the meaning of the county depository law. Fidelity & Deposit Co. v. Wilkinson County, 109 Miss. 879, 69 So. 865 (1915).

ATTORNEY GENERAL OPINIONS

Miss Code Section 27-105-303 sets forth requirements for counties in selecting financial depositories; pursuant to that section, county funds may be placed among several qualified institutions, provided each agrees to meet highest bid offered; there is no authority for governing authorities to place municipal funds in financial institution which did not originally submit bid therefor. McPhearson, Feb. 18, 1993, A.G. Op. #93-0013.

A City may place municipal funds in more than one financial institution/depository, as long as the financial institutions meet all of the statutory requirements under Sections 27-105-303 through 27-105-315 and, as long as each agrees to meet the highest bid offered. Woods, April 5, 1996, A.G. Op. #96-0155.

The members of the Board of Commissioners of the Delta Correctional Facility Authority may only receive such compensation, including per diem compensation, as is permitted by the Board of Supervisors of Leflore County; no duty is imposed upon the Chancery Clerk of Leflore County to insure that DCFA receives interest upon its funds upon deposit, nor is a duty imposed upon a financial institution to pay interest upon public funds when the governing authorities have not insured that the account containing public funds is interest bearing; and the duty insure that securities are pledged for deposited funds of DCFA is upon the board of supervisors, or the president and clerk of the board of supervisors in case the board is not in session. Abraham, January 23, 1998, A.G. Op. #98-0021.

A board of supervisors upon compliance with §§ 27-105-303, 27-105-305 and 27-105-315 may select more than one qualified financial institution to serve as a county depository. Younger, Sept. 6, 2002, A.G. Op. #02-0499.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 11, 12.

15A Am. Jur. Legal Forms 2d, Public Funds, § 211:13 et seq.

CJS. 26A C.J.S., Depositaries §§ 54-61.

§ 27-105-305. Publication for bids to keep county funds; content of bids; acceptance of bid; election by board of supervisors to submit certain bids to State Treasurer to determine acceptance of bid; authority of State Treasurer upon receipt of bids from board of supervisors.

The board of supervisors at the regular December 1997 meeting, and annually thereafter or, in the discretion of the board of supervisors, every two (2) years thereafter, shall give notice to all financial institutions in its county whose accounts are insured by the Federal Deposit Insurance Corporation (or any successor thereto), by publication, that bids will be received from financial institutions at the following January meeting, or some subsequent meeting, for the privilege of keeping the county funds, or any part thereof, which notice shall refer by name to this article and it shall not be necessary to incorporate in the notice the provisions of this article; and at the January meeting, or a subsequent meeting as may be designated in the notice, as the case may be, the board of supervisors shall receive such bids or proposals as the financial institutions may make for the privilege of keeping the county funds, or any part thereof. The bids or proposals shall designate the kind of security as authorized by law which the financial institutions propose to give as security for funds, and the board shall cause the county funds and all other funds in the hands of the county treasurer to be deposited in the qualified financial institution or qualified institutions proposing the best terms and meeting the requirements provided in Section 27-105-315, having in view the safety of such funds. However, if a bank submits a bid or offer to the board of supervisors to act as a depository for the county and the bid or offer, if accepted, would result in a contract in which a member of the board of supervisors would have a direct or indirect interest, the board of supervisors may elect to not open or consider any bids received and submit the matter to the State Treasurer. Upon receipt of the bids received from the board of supervisors, the State Treasury shall open and consider the bids received, select a depository or depositories, make all decisions and take any action within the authority of the board of supervisors under this section relating to the selection of a depository or depositories, including:

(a) The selecting and opening of accounts;
(b) Approval of securities;
(c) The transfer and deposit of funds between depositories; and
(d) All other related functions.

If the board of supervisors elects to open and consider the bids or offers, it shall not open or consider any bid which, if accepted, would result in a contract in which a member of the board of supervisors would have a direct or indirect interest.

SOURCES: Codes, Hemingway's 1917, § 4235; 1930, § 4341; 1942, § 9145; Laws, 1914, ch. 257; Laws, 1926, ch. 248; Laws, 1985, ch. 514, § 9; Laws, 1988, ch. 473, § 7; Laws, 1997, ch. 435, § 1; Laws, 2012, ch. 338, § 1, eff from and after passage (approved Apr. 16, 2012).

Cross References — Readvertisement when no bids received, see § 27-105-307.

Penalty for obstructing bids, see § 27-105-313.

Depositories for county and municipal hospital funds, see § 27-105-365.

Application of this section to funds received by school boards of all school districts, see § 37-7-333.

Application of this section to the selection of a depository by an administrative library board of trustees, see § 39-3-17.

Federal Aspects — Federal Deposit Insurance Corporation, see 12 USCS § 265 and § 1811 et seq.

ATTORNEY GENERAL OPINIONS

Governing authorities of municipalities are required to advertise for bids in the manner set forth in Miss. Code Section 27-105-305; pursuant to that statute, governing authorities at regular December meeting must give notice to all financial institutions in municipality whose accounts are insured by Federal Deposit Insurance Corporation or Federal Savings and Loan Corporation, by publication that bids will be received from financial institutions for privilege of keeping municipal funds or any part thereof. McPhearson, Feb. 18, 1993, A.G. Op. #93-0013.

Miss. Code Section 27-105-305 provides that municipal funds shall be deposited in qualified financial institution proposing best terms and meeting requirements provided in Miss. Code Section 27-105-315, having in view safety of such funds. McPhearson, Feb. 18, 1993, A.G. Op. #93-0013.

A bank may qualify as a county depository under Sections 27-105-305 and 27-105-315 if it has at least one branch office located within the county and meets all other requirements. James, August 16, 1996, A.G. Op. #96-0503.

Where a banking institution was neither insured by the FDIC nor had been the subject of the determination by the State Treasurer of the primary capital to total assets ratio, such banking institution was not a qualified financial institution under subsection (1) and the county board of supervisors could not accept and open a bid from such banking institution. Allen, Feb. 4, 2000, A.G. Op. #2000-0028.

Absent the inability thereafter of a financial institution to continue as a county depository, a county may not readvertise or through some other method designate a new financial entity as a qualified depository such that public funds may be deposited with a proposed new bank without complying with the statutory requirement that it publish notices at its regular December meeting and select a depository at the January meeting or some subsequent meeting. Dulaney, May 5, 2000, A.G. Op. #2000-0247.

All of a county's funds need not be placed in a single depository, and a county may have several county depositories simultaneously in which different portions of its funds may lie; thus, where a county received bids from two banks and each bank offered better terms with regard to different services, the county could select one or both of the banks, as long as the board of supervisors found that the specific deposits would be placed in the bank offering the best terms for that specific service, keeping in view the safety of the funds. Fortier, Mar. 9, 2001, A.G. Op. #01-0085.

A board of supervisors upon compliance with §§ 27-105-303, 27-105-305 and 27-105-315 may select more than one qualified financial institution to serve as a county depository. Younger, Sept. 6, 2002, A.G. Op. #02-0499.

A credit union that is insured with the National Credit Union Administration does not meet the statutory requirement to place bids to become a town's depository. Phillips, Feb. 14, 2005, A.G. Op. 05-0044.

In selecting depositories, there is no authority for the board of supervisors to request or permit a financial institution to change the interest rate quoted in its bid proposal to match that of the highest bidder. Stubbs, Mar. 11, 2005, A.G. Op. 05-0083.

§ 27-105-307. When no bids submitted; board to readvertise.

When no bid is made by any qualified financial institution in the county or in the adjoining county to qualify as a depository at the January meeting, the board of supervisors shall readvertise at some subsequent meeting for a depository and select same, in the manner provided by law.

SOURCES: Codes, Hemingway's 1917, § 4236; 1930, § 4342; 1942, § 9146; Laws, 1914, ch. 257; Laws, 1916, ch. 208; Laws, 1985, ch. 514, § 18, eff from and after October 1, 1985.

Cross References — Provision for mailing to the State Treasurer the notice provided for in this section, see § 27-105-311.

Penalty for obstructing bids, see § 27-105-313.

§ 27-105-309. When banks in county fail to respond.

Any county failing to secure a county depository by the advertisement to the qualified financial institutions of the county and of the adjoining counties, shall readvertise at any subsequent meeting of the board of supervisors, and as soon as possible, for bids for a county depository. Such notice shall be published once a week for three (3) weeks in some newspaper published in the county, and in a daily newspaper in Jackson, Mississippi, and shall state that the proposal is open to any qualified financial institution in the state, and that financial institutions outside of the county shall have preference over county financial institutions.

SOURCES: Codes, Hemingway's 1917, § 4237; 1930, § 4343; 1942, § 9147; Laws, 1916, ch. 208; Laws, 1985, ch. 514, § 19, eff from and after October 1, 1985.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 27-105-311. State Treasurer to aid in selection.

The clerk of the board of supervisors shall mail a copy of the notice provided for in Section 27-105-309 to the State Treasurer, who shall make efforts to have some qualified financial institution in the state submit bids for such depository.

SOURCES: Codes, Hemingway's 1917, § 4238; 1930, § 4344; 1942, § 9148; Laws, 1916, ch. 208; Laws, 1985, ch. 514, § 20, eff from and after October 1, 1985.

§ 27-105-313. Obstructing bids; penalty for.

It shall be unlawful for any officer in any financial institution, or any other person, to make an agreement of any kind with the intent and purpose of keeping any financial institution from bidding for county deposits, whether such agreement be express or implied, and any person violating this provision shall, upon conviction, be fined not less than Five Hundred Dollars ($500.00), nor more than One Thousand Dollars ($1,000.00) and shall be imprisoned in the county jail for not less than thirty (30) days, nor more than six (6) months.

SOURCES: Codes, Hemingway's 1917, § 4239; 1930, § 4345; 1942, § 9149; Laws, 1914, ch. 257; Laws, 1985, ch. 514, § 21, eff from and after October 1, 1985.

§ 27-105-315. Qualification as depository.

(1) Any financial institution in a county, or in an adjoining county where there is no financial institution in the county qualifying, whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation may qualify as a county depository, if the institution qualifies as a public funds depository under Section 27-105-5 or a public funds guaranty pool member under Sections 27-105-5 and 27-105-6. The qualified financial institution shall secure those deposits by placing qualified securities on deposit with the State Treasurer as provided in Section 27-105-5.

(2) Notwithstanding the foregoing, any financial institution whether or not meeting the prescribed ratio requirement whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may receive county funds in an amount not exceeding the amount that is insured by that insurance corporation and may qualify as a county depository to the extent of that insurance.

(3) For purposes of the foregoing subsection (2), a deposit or investment shall be within the amount that is insured by that insurance corporation if the deposit or investment is made on the following conditions:

(a) The financial institution arranges for the investment of the funds in interest-bearing accounts in one or more banks or savings and loan associations wherever located in the United States, for the account of the public depositor;

(b) The full amount of the principal and accrued interest of each such interest-bearing account is insured by the Federal Deposit Insurance Corporation;

(c) The financial institution acts as custodian for the public depositor with respect to the funds invested in the public depositor's account; and

(d) At the same time that such interest-bearing accounts are invested, the financial institution receives an amount of deposits from customers of other financial institutions located in the United States equal to or greater than the amount of the funds invested by the public depositor through the financial institution.

SOURCES: Codes, Hemingway's 1917, § 4240; 1930, § 4346; 1942, § 9150; Laws, 1912, ch. 194; Laws, 1918, ch. 187; Laws, 1934, chs. 211, 212; Laws, 1936, ch. 168; Laws, 1948, ch. 463, § 1; Laws, 1980, ch. 367; Laws, 1985, ch. 312, § 3; Laws, 1985, ch. 514, § 10; Laws, 1988, ch. 473, § 8; Laws, 2000, ch. 408, § 7; Laws, 2007, ch. 426, § 7; Laws, 2012, ch. 413, § 2, eff from and after July 1, 2012.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Chancery clerk, generally, see § 9-5-131 et seq.

Investment of surplus funds by counties, see § 19-9-29.

Qualification as public funds depository, see § 27-105-5.

Public funds guaranty pool, see § 27-105-6.

Bids for privilege of keeping county funds, see § 27-105-305.

Method of selecting municipal depository, see § 27-105-353.

Depositories for county and municipal hospital funds, see § 27-105-365.

Application of this section to depositories selected by school boards, see § 37-7-333.

Application of this section to the deposit of securities with a library director by a depository, see § 39-3-17.

Housing bonds, etc., as security for public funds in depositories, see § 43-33-305.

Farm credit securities, see § 75-69-3.

Federal Aspects — Federal Reserve System, see 12 USCS § 221 et seq.

Federal Deposit Insurance Corporation, see 12 USCS § 265 and § 1811 et seq.

Issuance of net worth certificates, see 12 USCS § 1823(i).

JUDICIAL DECISIONS

1. In general.
2. Effect of insolvency of depository.

1. In general.

County board of supervisors is under nondiscretionary, ministerial duty to require bank to furnish securities of kind required by statute before designating it as county depository. Walton v. Colmer, 169 Miss. 182, 147 So. 331 (1933), error overruled, 169 Miss. 186, 148 So. 635 (1933).

New bond to qualify bank as depository for same class of county funds as covered by earlier bond and also for different class held not included under indemnity agreement applicable to earlier bond. Maryland Cas. Co. v. Corley's Estate, 162 Miss. 554, 139 So. 390 (1932).

Funds paid by county into depository are neither county nor trust funds, but become funds of the bank. Robertson v. Bank of Batesville, 116 Miss. 501, 77 So. 318 (1918).

Where board of supervisors permitted depository to have greater amount of public funds than the security given permitted such excess became a trust fund under Code 1906 § 3485. Powell v. Board of Supvrs., 107 Miss. 410, 65 So. 499, Am. Ann. Cas. 1916B,1262 (1914).

2. Effect of insolvency of depository.

The sureties of an insolvent bank as a depository of county funds, who have paid the full amount for which they were obligated, are not entitled to the excess of the proceeds of bonds also pledged by the bank as security over the residue of the amount of the county's deposits covered by the depository securities, as against the claim of the county thereto in respect of deposits not covered by the depository securities, under a statute which provides in effect that all money deposited in a bank by an officer having the custody of public funds is a trust fund for the payment of which a preference is imposed on all the free assets of the bank, as against all general creditors. United States Fid. & Guar. Co. v. Sunflower County, 194 Miss. 680, 12 So. 2d 142 (1943).

Recovery may be had on county supervisors' official bonds for county funds in insolvent bank, selected by them as county depository without requiring it to furnish securities. Walton v. Colmer, 169 Miss. 182, 147 So. 331 (1933), error overruled, 169 Miss. 186, 148 So. 635 (1933).

Depository's surety held not liable for amount due county when bank closed its doors after expiration of bond. Sunflower County v. Bank of Drew, 136 Miss. 191, 101 So. 192 (1924).

ATTORNEY GENERAL OPINIONS

Holding of qualified securities on behalf of medical center in vaults of one bank to secure deposits of medical center in another bank did not violate statute requiring pledge of such securities where both banks were held by same holding company, assuming that bank holding securities otherwise qualified under statute to hold such pledged securities. Chaffin, July 13, 1993, A.G. Op. #93-0294.

A bank may qualify as a county depository under Section 27-105-305 and this section if it has at least one branch office located within the county and meets all other requirements. James, August 16, 1996, A.G. Op. #96-0503.

The members of the Board of Commissioners of the Delta Correctional Facility Authority may only receive such compensation, including per diem compensation, as is permitted by the Board of Supervisors of Leflore County; no duty is imposed upon the Chencery Clerk of Leflore County to insure that DCFA receives interest upon its funds upon deposit, nor is a duty imposed upon a financial institution to pay interest upon public funds when the governing authorities have not insured that the account containing public funds is interest bearing; and the duty insure that securities are pledged for deposited funds of DCFA is upon the board of supervisors, or the president and clerk of the board of supervisors in case the board is not in session. Abraham, January 23, 1998, A.G. Op. #98-0021.

A bank did not qualify as a financial institution or bank for the purpose of placing in the vaults thereof securities pledged by the county depositories where the bank was a member of the Federal Reserve System, but was not located in the State of Mississippi, was neither a Federal Reserve bank nor a Federal Reserve branch bank, and was not located in a city where there was either a Federal Reserve bank or a Federal Reserve branch bank. Hall, February 5, 1999, A.G. Op. #99-0037.

This section is satisfied when the safekeeping bank for securities pledged by a depository bank is located in a state other than Mississippi, is a member of the Federal Reserve system but is not located in a city where there is a Federal Reserve bank or Federal Reserve branch bank, so long as the securities are actually held by a Federal Reserve bank or Federal Reserve branch bank which issues a safekeeping receipt identifying the pledged securities and the secured depositor (the county) to the depository bank, which then issues a receipt with this same information to the depositor; this scheme gives effect to the legislative intent in that public funds are properly secured in fact, although modern banking practices do not make possible a literal compliance with the ancient, unwieldy statute. Parham, April 2, 1999, A.G. Op. #99-0097.

This section is satisfied when the safekeeping bank for securities pledged by a depository bank is located in a state other than Mississippi, is a member of the Federal Reserve system but is not located in a city where there is a Federal Reserve bank or Federal Reserve branch bank, so long as the securities are actually held by a Federal Reserve bank or Federal Reserve branch bank which issues a safekeeping receipt identifying the pledged securities and the secured depositor (the county) to the depository bank, which then issues a receipt with this same information to the depositor. Hall, April 27, 1999, A.G. Op. #99-0133.

The board of trustees of a county school district may accept from a qualified financial institution as pledged security for school funds placed in such institution, surety bonds of any surety company authorized to do business in Mississippi, provided that such bonds are not rated substandard by any of the appropriate supervisory authorities having jurisdiction over such depository or by any recognized national rating agency engaged in the business of rating bonds; however, the board should be aware that surety bonds are not negotiable instruments which can be sold to recover lost deposits. Dickey, June 18, 1999, A.G. Op. #99-0287.

Where a banking institution was neither insured by the FDIC nor had been the subject of the determination by the State Treasurer of the primary capital to total assets ratio, such banking institution was not a qualified financial institution under subsection (1) and the county board of supervisors could not accept and open a bid from such banking institution. Allen, Feb. 4, 2000, A.G. Op. #2000-0028.

A board of supervisors upon compliance with §§ 27-105-303, 27-105-305 and 27-105-315 may select more than one qualified financial institution to serve as a county depository. Younger, Sept. 6, 2002, A.G. Op. #02-0499.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 8 et seq.

15A Am. Jur. Legal Forms 2d, Public Funds, §§ 211:34-211:38.

CJS. 26A C.J.S., Depositaries §§ 62-90.

§ 27-105-317. Commission of depository.

A county depository must be issued a commission under Section 27-105-11 before receipt of county deposits.

SOURCES: Codes, Hemingway's 1917, § 4241; 1930, § 4347; 1942, § 9151; Laws, 1912, ch. 194; Laws, 1985, ch. 514, § 22; Laws, 2000, ch. 408, § 8, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Commission issued depository, see § 27-105-11.

§ 27-105-319. Repealed.

Repealed by Laws of 2000, ch. 408, § 16, effective from and after July 1, 2001.

[Codes, Hemingway's 1917, § 4242; 1930, § 4348; 1942, § 9152; Laws, 1912, ch. 194; Laws, 1946, ch. 422, § 2; Laws, 1985, ch. 514, § 23; Laws, 2000, ch. 408, § 16, eff from and after July 1, 2001.]

Editor's Note — Laws of 2000, ch. 408, §§ 16 and 17, provides:

"SECTION 16. Section 27-105-319, which provides the form of the commission for a county depository, is repealed."

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Former § 27-105-319 was entitled "Form of commission."

§ 27-105-321. Receipts in triplicate to be issued for deposits; disposition of same.

When any payment of county funds shall be made into a county depository in pursuance of this article, the depository shall give the person making such payment triplicate receipts, specifying the accounts on which the payment is made, one of which shall be immediately mailed to the chancery clerk of the county. Any person paying money into the county depositories shall, before paying same, receive a pay warrant from the chancery clerk allowing him to make such deposit, and no county depository shall receive any money unless accompanied by such pay warrant.

SOURCES: Codes, Hemingway's 1917, § 4243; 1930, § 4349; 1942, § 9153; Laws, 1912, ch. 194.

Cross References — Issuance of warrants by county auditor, see § 19-17-9.

§ 27-105-323. Detailed reports made to supervisors of receipts and disbursements by depositories.

In any county where a county depository or depositories shall qualify as herein provided, every such depository, at the regular January, April, July and October meetings of the board of supervisors, and at such other times as may be required by the board, shall make to the board of supervisors a detailed report of all moneys received by it and of the disbursements thereof, so that said receipts and disbursements shall clearly and distinctly appear; and each depository shall exhibit with its reports the vouchers for the disbursements charged therein, and all such vouchers paid by the county depository shall be marked cancelled by the clerk and shall be filed and preserved by the clerk subject to examination by the state auditing department. Such depository shall also, at the time of making such reports, present a certified statement of the amount then on deposit in the depository, and shall, upon demand of the board of supervisors, bring all moneys belonging to the county to the board of supervisors to be counted; and, if any county depository shall neglect or refuse to make such reports, it shall forfeit the sum of two hundred and fifty dollars ($250.00) to be recovered by suit in the name of the county for its use.

SOURCES: Codes, Hemingway's 1917, § 4244; 1930, § 4350; 1942, § 9154; Laws, 1912, ch. 194; Laws, 1946, ch. 338, § 1.

Cross References — Duty of county auditor to keep depository funds ledger, see § 19-17-5.

§ 27-105-325. How tax collectors to settle with county treasury.

In making a settlement with the county treasury, the tax collector of each county shall pay the amount due the county to a county depository, according to law and the rules of the board of supervisors. The tax collector, in making deposits, shall receive duplicate receipts for the same and shall mail one to the chancery clerk, and the county depository, upon demand, shall issue its official receipt as required heretofore.

SOURCES: Codes, Hemingway's 1917, § 4245; 1930, § 4351; 1942, § 9155; Laws, 1912, ch. 194.

Cross References — Tax collector's monthly report of state, county and levee taxes collected, see § 27-29-11.

Tax collector's deposit of collections in state depository in settlement with Executive Director of the Department of Finance and Administration, see § 27-105-23.

Tax collector's deposit of funds collected in county depository, see § 27-105-337.

§ 27-105-327. Amount to be paid by depositories for privilege of keeping funds; how computed.

The amount to be paid by any and all depositories for the privilege of keeping county funds on deposit, if required to be paid under the provisions of Section 27-105-303, shall be computed on the average daily balance of the public money kept on deposit therewith and there be credited and paid to the county monthly. Each depository shall render, at the beginning of each and every month, to the chancery clerk a statement in duplicate, showing the daily balance of the county money held by it during the month next preceding, and all sums paid to the county for the privilege of keeping said county money shall be credited to the account of the several funds entitled thereto.

SOURCES: Codes, Hemingway's 1917, § 4246; 1930, § 4352; 1942, § 9156; Laws, 1912, ch. 194; Laws, 1985, ch. 514, § 24, eff from and after October 1, 1985.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 9, 10.

CJS. 26A C.J.S., Depositaries §§ 91-95.

§ 27-105-329. Failure to pay county warrants.

In the event of the failure of any county depository to pay any county warrant lawfully issued on any funds on deposit belonging to the county in the depository, the county is empowered to order the State Treasurer to sell such securities as are placed with the State Treasurer by the depository, or call on the public funds guaranty pool if the depository is a member, or so much of them as may be necessary to cover back into the county treasury the amount of county funds on deposit with the depository, with accrued interest thereon, as provided in Section 27-105-25. In the event of the failure of the county depository to pay any warrant when the depository has placed as security surety bonds, the clerk or holder of the warrant shall notify the president of the board of supervisors and he shall take such immediate action as he may deem best and most expedient for covering back into the Treasury all county money on deposit in the depository, and the board of supervisors is authorized to employ counsel, if necessary, to more speedily enforce the payment. The expenses of the collection, including the counsel fee, shall be charged against the depository, and, in addition thereto, the depository shall be liable for damages at the rate of one percent (1%) per month for any delay in paying over any county funds when lawfully demanded, and the bond of any depository shall be liable for those expenses and damages.

SOURCES: Codes, Hemingway's 1917, § 4247; 1930, § 4353; 1942, § 9157; Laws, 1912, ch. 194; Laws, 2000, ch. 408, § 9, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Public funds guaranty pool, see § 27-105-6.

Failure of state depository to pay state treasurer's checks, see § 27-105-25.

Failure to pay treasurer's check, see § 27-105-25.

JUDICIAL DECISIONS

1. In general.

Statute authorizing county to sell securities placed with it by depository, where depository fails to pay county warrants, does not authorize suit by county on behalf of payees of warrants on which county has been discharged from liability. Chickasaw County v. Love, 169 Miss. 398, 153 So. 156 (1934).

Where negotiable securities held by county securing funds in depository are ample though there are surety bonds in addition, the county board may not, under statute, employ attorneys and charge their fees against the depository. Winston County v. Louisville Home Bank, 164 Miss. 64, 143 So. 884 (1932).

It is the duty of a bank in custody of county funds to refuse to pay warrants which it knows to be fraudulently issued and to resist mandamus to compel it to do so. Cleveland State Bank v. Cotton Exch. Bank, 119 Miss. 868, 81 So. 170 (1919).

Allowance of penalty of 1% per month for delays in paying over funds, and of counsel fees, held not improper. Fidelity & Deposit Co. v. Wilkinson County, 109 Miss. 879, 69 So. 865 (1915).

This 1% is in lieu of all other interest and damages except attorney's fees. Fidelity & Deposit Co. v. Wilkinson County, 109 Miss. 879, 69 So. 865 (1915).

ATTORNEY GENERAL OPINIONS

The state is not the guarantor of funds; a public entity's remedy is to have the State Treasurer sell the securities and/or to employ counsel to enforce payment.

Ross, Jr., June 7, 2002, A.G. Op. #02-0262.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 28, 29.

CJS. 26A C.J.S., Depositaries §§ 50-52, 91-109.

§ 27-105-331. Acquisition of closed depository securities.

The State Treasurer, on behalf of any county in the State of Mississippi that has acquired bonds or other securities as the result of the closing of the depository or depositories of the county, is authorized and empowered in his discretion to sell, trade, refinance or agree to the refinancing of any or all of those bonds now held or owned by it and by any subdivision or taxing district of the county. The State Treasurer is further authorized and empowered, in his discretion, in refinancing any of those bonds, to agree to a reduction of the principal sum and likewise to agree to a reduction of the interest rate thereon. The State Treasurer is authorized and empowered, in his discretion, to sell any of those bonds at or for the best price obtainable, or to trade those bonds for other bonds, when in the judgment of the State Treasurer the best interests of the county would be advanced thereby, and he is further authorized to handle and negotiate any matured interest coupons on any of those bonds in the same manner as he is authorized in this section to deal with the bonds.

All of the proceeds of the sale, refinancing, trading, or collection of any of those bonds shall be accounted for by the State Treasurer and placed to the credit of the subdivisions or funds of the counties entitled to those proceeds.

SOURCES: Codes, 1942, § 9158; Laws, 1936, ch. 302; Laws, 2000, ch. 408, § 10, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

§ 27-105-333. Alternative method of selecting depositories.

In any county in this state where no depository or depositories were selected and qualified, as provided by law, on or before the first Monday of January 1932, or in which the depository or depositories are not selected and qualified annually thereafter on or before the first Monday in January, the board of supervisors of the county shall, at the January meeting of the board or any regular meeting or special meeting thereafter called for that purpose, select and designate a depository or depositories into which the tax collector or tax collectors of the county shall deposit all tax collections and other public funds collected after the first Monday in January 1932, when collected, and in which the same shall thereafter be distributed, at the time and in the manner as now required by law, to the several funds or accounts in which the same properly belong, as provided by law herein.

Any depository so selected by the board of supervisors shall be within the State of Mississippi and may hold the deposits at such rate of interest as may be agreed upon with the board of supervisors or, in the discretion of the board of supervisors, without liability for interest unless it is required to be paid under the provisions of Section 27-105-303, but the depository shall secure the deposits by pledging with the State Treasurer such securities in such amounts and upon such conditions as are now required by law of depositories that qualify as such by bidding for them.

SOURCES: Codes, 1942, § 9159; Laws, 1932, ch. 215; Laws, 1985, ch. 514, § 25; Laws, 2000, ch. 408, § 11, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

JUDICIAL DECISIONS

1. In general.

Statute requiring selection of special depository for sheriff's and tax collector's funds being inapplicable to counties having regular county depository, sheriff depositing public funds in county depository held not liable to state tax collector for loss on depository's insolvency. Gully v. Sowell, 169 Miss. 611, 151 So. 376 (1933), error overruled, 169 Miss. 617, 153 So. 523 (1934).

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 11, 12.

CJS. 26A C.J.S., Depositaries §§ 54-61.

§ 27-105-335. Designation of depository for county by Commissioner of Banking and Consumer Finance.

In the event no financial institution qualifies as county depository as provided by law prior to the first Monday in January, 1986, or does not qualify on or before said date annually thereafter, and the board of supervisors does not designate a county depository which qualifies hereunder, then the tax collector and the surety or sureties on his official bond may call upon the Commissioner of Banking and Consumer Finance to designate, and the Commissioner of Banking and Consumer Finance shall designate a depository for said county, which shall qualify as hereinabove provided, and which shall act as county depository for said county until a depository is selected for said county and qualified as hereinabove provided.

SOURCES: Codes, 1942, § 9160; Laws, 1932, ch. 215; Laws, 1950, ch. 203, § 1; Laws, 1985, ch. 514, § 26, eff from and after October 1, 1985.

Cross References — Commissioner of Banking and Consumer Finance generally, see § 81-1-57 et seq.

§ 27-105-337. Tax collector to deposit funds.

Upon the selection of any county depository, either upon bids therefor or by designation of the board of supervisors or the Commissioner of Banking and Consumer Finance, and such designated financial institution becoming qualified as required by law, the tax collector of such county or counties shall deposit all funds collected therein and thereafter make a transfer to the several accounts and funds as now required by law of him in making his settlements. Upon so depositing such funds when collected, the tax collector shall thereupon be relieved and discharged from further liability therefor excepting for such amounts as the tax collector may withdraw or cause to be withdrawn from his account or accounts and to which he is not legally entitled.

SOURCES: Codes, 1942, § 9161; Laws, 1932, ch. 215; Laws, 1950, ch. 203, § 2; Laws, 1985, ch. 514, § 27, eff from and after October 1, 1985.

Cross References — Tax collector's monthly report of state, county and levee taxes collected, see § 27-29-11.

Tax collector's deposit of collections in state depository, see § 27-105-23.

Tax collector's settlement with county treasury, see § 27-105-325.

Commissioner of Banking and Consumer Finance generally, see § 81-1-57 et seq.

JUDICIAL DECISIONS

1. In general.

Statute providing that collector "shall" deposit tax funds in county depository held mandatory. Gully v. Sowell, 169 Miss. 611, 151 So. 376 (1933), error overruled, 169 Miss. 617, 153 So. 523 (1934).

Collector may lawfully deposit tax collections daily in county depository and subsequently transfer collections to proper funds, and as to such deposits, he is protected against liability on depository's insolvency. Gully v. Sowell, 169 Miss. 611, 151 So. 376 (1933), error overruled, 169 Miss. 617, 153 So. 523 (1934).

Statute which, having authorized selection of emergency county depository, relieves collector from liability after depositing tax funds in county depository, held applicable to counties having regular depository as well as counties selecting emergency depository. Gully v. Sowell, 169 Miss. 611, 151 So. 376 (1933), error overruled, 169 Miss. 617, 153 So. 523 (1934).

ATTORNEY GENERAL OPINIONS

The county tax collector must use the depository/depositories selected by the board of supervisors and is without authority to independently select depositories. Carnathan, June 7, 2002, A.G. Op. #02-0305.

§ 27-105-339. Insufficient depository.

In counties where county depositories have been designated and qualified as provided by law or which shall hereafter be designated and qualified as provided by law but not for an amount sufficient to cover all county funds belonging to such counties, the provisions of Sections 27-105-333 and 27-105-

335 shall be applied to secure depositories for such excess funds in the same manner and under the same conditions as apply to counties where no depositories exist.

SOURCES: Codes, 1942, § 9162; Laws, 1932, ch. 215.

§ 27-105-341. Sections 27-105-333 through 27-105-339 cumulative.

Sections 27-105-333 through 27-105-339 shall not be held to modify or repeal any existing law relative to county depositories and the deposit of county funds, but are expressly intended to extend the existing laws of the state and provide additional methods of selecting county depositories.

SOURCES: Codes, 1942, § 9164; Laws, 1932, ch. 215.

§ 27-105-343. Chancery clerks to perform duties of county treasurers.

From and after the passage of this section, all the duties except the duty of receiving and disbursing money that were imposed by law on county treasurers shall be required to be done by chancery clerks, and they shall be the custodians of all the books, records, papers, and vouchers heretofore belonging to county treasurers, and shall be custodians of all the promissory notes, bonds, and other like property belonging to or deposited with the county, and said clerks shall in all respects be liable on their official bonds for the proper care of the same.

The duty of receipting for and disbursing all monies heretofore deposited with county treasurers shall be done and performed by the designated county and drainage district depositories appointed in the manner provided by law; and any person or corporation required to pay money into a county treasury shall hereafter pay the same to a properly designated depository and such depository shall issue receipts therefor in duplicate, one of which shall be filed with the chancery clerk and the other retained by the person or corporation making such payment, and such payment when made to a designated depository shall discharge the person or corporation making such payment from any further liability therefor.

In the event there shall be no designated depository for any money required to be paid into a county treasury, such payment shall be made to the tax collector who shall receipt for same in duplicate as required in the preceding paragraph and shall pay the same over to a legally appointed depository within ten (10) days after one is qualified to receive the same. The tax collector shall be the custodian of all money belonging to a county or any subdivision thereof until there be appointed a depository for any such funds and the said tax collectors shall be liable on their official bond for the proper accounting and payment of any funds so paid to them.

Boards of supervisors shall allow chancery clerks for their compensation for performance of the duties required of them by this section the sum of Two Thousand Five Hundred Dollars ($2,500.00) per annum.

Nothing in this section shall preclude drainage districts from selecting their treasurer or depository as now provided by law.

SOURCES: Codes, 1942, § 9165; Laws, 1932, ch. 207; Laws, 1968, ch. 361, § 14; Laws, 1981, ch. 497, § 3; Laws, 2004, ch. 505, § 12, eff August 19, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2004, ch. 505, § 12.

Cross References — Constitutional provision for selection of person to assume duties of county treasurer, see Miss. Const Art. 5, § 135.

False entries or alterations of entries in books of public office as criminal offense, see § 97-21-1.

§ 27-105-345. Traffic in public funds prohibited; penalty therefor.

The making of profit, directly or indirectly, by the county treasurer, tax collector, treasurer of any board of trustees, or any officer whatever, out of any money belonging to a county, the custody of which the county treasurer or other officer is charged with, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or a removal by any such officer or by his consent of such moneys, or a part thereof, and placing it elsewhere than as provided by law, shall constitute a felony, and, on conviction thereof, shall subject such officer to imprisonment in the state penitentiary for a term not exceeding two (2) years or a fine not exceeding five thousand dollars ($5,000.00), or to both such fine and imprisonment, and the officer offending shall be liable on his official bond for all profits realized for such unlawful use of such funds.

SOURCES: Codes, Hemingway's 1917, § 4248; 1930, § 4354; 1942, § 9166; Laws, 1912, ch. 194.

Cross References — Trafficking in state funds, see § 27-105-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 3.

CJS. 26A C.J.S., Depositaries § 53.

§ 27-105-347. Penalty.

If any officer, treasurer, sheriff, tax collector, member of the board of supervisors, or other person charged with the enforcement of this article, shall at any time fail or refuse to perform any act required of him by this article, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five thousand dollars ($5,000.00).

SOURCES: Codes, Hemingway's 1917, § 4249; 1930, § 4355; 1942, § 9167; Laws, 1912, ch. 194.

Cross References — Penalty for public officer's refusal or failure to perform duty as to state funds, see § 27-105-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-105-349. County withdrawal of bonds pledged or filed as security.

The State Treasurer is authorized and empowered to allow county depositories of county funds or county district funds of every kind and character to withdraw any bonds pledged or filed or deposited as security for those deposits:

(a) When in the opinion of the State Treasurer the deposits become reduced to such an extent as to justify the withdrawal;

(b) Or to withdraw any such bonds or corporate surety bonds, and substitute in lieu thereof other bonds or corporate surety bonds, as the case may be.

All such bonds shall be such as are authorized by law to be pledged or filed as security for those deposits, or if a corporate surety bond, it must be made by a surety company authorized to do business in this state; and in addition, all such deposits shall be fully secured and covered as required by Section 27-105-5.

SOURCES: Codes, 1930, § 4356; 1942, § 9168; Laws, 1922, ch. 284; Laws, 1956, ch. 206; Laws, 1995, ch. 567, § 3; Laws, 2000, ch. 408, § 12, eff from and after July 1, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Qualification as public funds depository, see § 27-105-5.

Withdrawal of securities by state depositories, see § 27-105-35.

Withdrawal of bonds of municipal depositories, see § 27-105-359.

ATTORNEY GENERAL OPINIONS

Under this section and Section 27-105-359 depositors of county or municipal funds may, through use of a written collateral security agreement, authorize depositories to substitute securities eligible to be pledged under Mississippi statutes of the same or greater amount or value as those removed, without the necessity of board approval for each substitution, provided that the agreement requires the depository to pledge securities of the types and amounts or values as required by Mississippi statutes. Neely, June 22, 1995, A.G. Op. #95-0280.

The members of the Board of Commissioners of the Delta Correctional Facility Authority may only receive such compensation, including per diem compensation, as is permitted by the Board of Supervisors of Leflore County; no duty is imposed upon the Chencery Clerk of Leflore County to insure that DCFA receives interest upon its funds upon deposit, nor is a duty imposed upon a financial institution to pay interest upon public funds when the governing authorities have not insured that the account containing public funds is interest bearing; and the duty insure that securities are pledged for deposited funds of DCFA is upon the board of supervisors, or the president and clerk of the board of supervisors in case the board is not in session. Abraham, January 23, 1998, A.G. Op. #98-0021.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 14.

§ 27-105-351. Drainage district funds; how dealt with.

All funds coming into the county treasury belonging to any drainage district shall be deposited in the county depositories under the same conditions as county funds are deposited, to be drawn by the proper parties and in the manner provided by law. All tax collectors may pay drainage taxes into such depositories in the same manner as county funds are paid in, and shall be subject to the same protection provided herein for the protection of county funds.

SOURCES: Codes, Hemingway's 1917, § 4250; 1930, § 4357; 1942, § 9169; Laws, 1912, ch. 194.

Cross References — Deposit of county funds in county depositories, see §§ 27-105-321 to 27-105-325.

JUDICIAL DECISIONS

1. In general.

Drainage district, although having received periodical statements of bank account between time of wrongful payment from its account and closing of bank, held not estopped to recover money erroneously paid, where bank was not prejudiced. Bridge Creek Drainage Dist. v. Webster, 168 Miss. 115, 150 So. 915 (1933).

Swamp land district funds are not county funds nor drainage district funds, and the state revenue agent has no right as against the sheriff to possession thereof. Robertson v. People's Bank & Trust Co., 118 Miss. 650, 79 So. 827 (1918).

§ 27-105-353. Method of selecting municipal depositories.

The board of mayor and aldermen or other municipal authorities of each and every city, town or village in the state are required to select a depository in the manner provided by law for the selection of county depositories. Before being selected, a depository must be certified by the State Treasurer as meeting the capital ratio requirement specified in Section 27-105-5 or 27-105-6. An institution shall not be a qualified depository and shall not receive any municipal funds unless its ratio has been certified annually by the State Treasurer as meeting the prescribed requirement. Notwithstanding the foregoing, any financial institution whether or not meeting the prescribed ratio requirement whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation may receive municipal funds in an amount not exceeding the amount that is insured by that insurance corporation and may qualify as a municipal depository to the extent of that insurance as prescribed in Section 27-105-315.

SOURCES: Codes, Hemingway's 1917, § 4251; 1930, § 4358; 1942, § 9170; Laws, 1914, ch. 253; Laws, 1988, ch. 473, § 9; Laws, 2000, ch. 408, § 17; Laws, 2007, ch. 426, § 8, eff from and after passage (approved Mar. 22, 2007.)

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Duties of depository or treasurer of municipality, see § 21-39-19.

Qualification as public funds depository, see § 27-105-5.

Public funds guaranty pool, see § 27-105-6.

Selection of county depositories, see §§ 27-105-303 to 27-105-313, 27-105-333 to 27-105-341.

Depositories for county and municipal hospital funds, see § 27-105-365.

Federal Aspects — Federal Deposit Insurance Corporation, see 12 USCS § 1811 et seq.

JUDICIAL DECISIONS

1. In general.

Mayor and board of aldermen in selecting municipal depository are vested with discretionary powers which are not subject to judicial review by mandamus. Pearl River County Bank v. Town of Picayune, 126 Miss. 473, 89 So. 9 (1921).

Bank did not become legal depository by furnishing a personal bond in lieu of a bond of a surety company and money deposited therein by a municipality became under Code 1906, § 3485 trust funds. Bank of Commerce v. City of Gulfport, 117 Miss. 591, 78 So. 519 (1918).

City having right to proceed under Code 1906, § 3485 sureties were not necessary parties to the suit. Bank of Commerce v. City of Gulfport, 117 Miss. 591, 78 So. 519 (1918).

ATTORNEY GENERAL OPINIONS

This section provides that municipalities are required to select depository in manner provided by law for selection of county depositories. McPhearson, Feb. 18, 1993, A.G. Op. #93-0013.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 11, 12.

15A Am. Jur. Legal Forms 2d, Public Funds, §§ 211:13-211:17.

CJS. 26A C.J.S., Depositaries §§ 54-61.

§ 27-105-355. Security on bond.

Each depository shall enter into bond, or deposit securities with the State Treasurer as required of county depositories; the bond or security to be approved by the State Treasurer.

SOURCES: Codes, Hemingway's 1917, § 4252; 1930, § 4359; 1942, § 9171; Laws, 1914, ch. 253; Laws, 2000, ch. 408, § 14, eff from and after July 14, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Bonds and securities required of county depositories, see § 27-105-315.

JUDICIAL DECISIONS

1. In general.

State banking department making payments to city after failure of municipal depository held subrogated to rights of city against depository bond and sureties. Perkins v. State, 130 Miss. 512, 94 So. 460 (1922).

Sureties on depository's bond not liable on its failure to pay deposit subsequent to period for which it was appointed depository; on depository's failure to pay city deposits on demand, the sureties become liable therefor. Perkins v. State, 130 Miss. 512, 94 So. 460 (1922).

Sureties on municipal depository's bond held estopped to claim want of consideration, because bond unauthorized by law. Perkins v. State, 130 Miss. 512, 94 So. 460 (1922).

ATTORNEY GENERAL OPINIONS

Municipal depositories are required to post security in amount at least equal to 105% of the maximum sum to be placed on deposit in such institution at any one time exclusive of amounts that are federally insured. Horne, Oct. 30, 1991, A.G. Op. #91-0796.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 13 et seq.

15A Am. Jur. Legal Forms 2d, Public Funds, §§ 211:34-211:38.

CJS. 26A C.J.S., Depositaries §§ 62-90.

§ 27-105-357. Duties of depository; penalty for making profit or removing funds.

The duties of a depository are hereby made the same in respect to the municipal fund as the duties imposed upon county depositories or in respect to county funds. The penalties for making profit on or removing municipal funds are hereby made the same as those provided by law against making profit on or removing county funds.

SOURCES: Codes, Hemingway's 1917, § 4253; 1930, § 4360; 1942, § 9172; Laws, 1914, ch. 253.

Cross References — Trafficking in county funds, see § 27-105-345.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds
§ 3.
CJS. 26A C.J.S., Depositaries § 53.

§ 27-105-359. Municipal withdrawal of bonds pledged or filed as security.

The State Treasurer is authorized and empowered to allow municipal depositories of municipal funds of every kind and character to withdraw any bonds, including corporate surety bonds, pledged or filed or deposited as security for those deposits:

(a) When in the opinion of the State Treasurer the deposits become reduced to such an extent as to justify the withdrawal;

(b) Or to withdraw any such bonds or corporate surety bonds, and substitute in lieu thereof other bonds or corporate surety bonds, as the case may be.

All such bonds shall be such as are authorized by law to be pledged or filed as security for those deposits, or if a corporate surety bond, it must be made by a surety company authorized to do business in this state; and in addition, all such deposits shall be fully secured and covered as required by Section 27-105-5.

SOURCES: Codes, 1942, § 9173; Laws, 1932, ch. 236; Laws, 1995, ch. 567, § 4; Laws, 2000, ch. 408, § 15, eff from and after July 17, 2001.

Editor's Note — Laws of 2000, ch. 408, § 17, provides:

"SECTION 17. Section 1 and Sections 3 through 16 of this act shall take effect and be in force from and after July 1, 2001. Section 2 of this act shall take effect and be in force from and after the passage of this act" (approved April 17, 2000).

Cross References — Qualification as public funds depository, see § 27-105-5.

Withdrawal of bonds from county depositories, see § 27-105-349.

ATTORNEY GENERAL OPINIONS

Under Section 27-105-349 and this section depositors of county or municipal funds may, through use of a written collateral security agreement, authorize depositories to substitute securities eligible to be pledged under Mississippi statutes of the same or greater amount or value as those removed, without the necessity of board approval for each substitution, provided that the agreement requires the depository to pledge securities of the types and amounts or values as required by Mississippi statutes. Neely, June 22, 1995, A.G. Op. #95-0280.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds § 14.

§ 27-105-361. Banks failing to qualify, treasurer to be selected or depository designated.

In the event of failure on the part of any bank in such municipality to qualify as a depository, the board of mayor and aldermen or other like governing authority of such city, town or village, hereinafter called the governing authority, may select a treasurer who shall safely keep and disburse the funds of such town, city or village according to law, and make bond for that purpose as now provided by law for such treasurers. The governing authority at any regular or special meeting may select and designate a depository or depositories into which the tax collector or collectors and auditor or auditors of said city, town or village shall deposit all tax collections and public funds, when collected and/or received, and in which the same shall thereafter be distributed, at the time or in the manner, as required by law to the several funds or accounts as now provided by law. Any depository so selected by the governing authority shall be within the State of Mississippi, and may hold such deposit or deposits at such rate of interest as may be agreed upon by the governing authority or in the discretion of the governing authority without liability for interest; but such depositories shall secure the same by pledging with the governing authority such security, in such amounts and upon such conditions as is now required by law of depositories which qualify as such by bidding therefor.

SOURCES: Codes, Hemingway's 1917, § 4254; 1930, § 4361; 1942, § 9174; Laws, 1914, ch. 253; Laws, 1932, ch. 225.

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 11, 12.

CJS. 26A C.J.S., Depositaries §§ 54-61.

§ 27-105-363. Term of office of depository.

The term of office of a municipal depository shall be two (2) years.

SOURCES: Codes, Hemingway's 1917, § 4255; 1930, § 4362; 1942, § 9175; Laws, 1914, ch. 253.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 27-105-363 provides that term of office of municipal depository shall be two years. McPhearson, Feb. 18, 1993, A.G. Op. #93-0013.

§ 27-105-365. Depository for county and municipal hospital funds; investments.

(1) The commissioners or board of trustees of any hospital owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts, or election districts or combinations thereof, including hospitals established under the authority of Sections 41-13-1 through 41-13-9, as now or hereafter amended, are hereby authorized and empowered to deposit the funds of such hospital in or through one or more financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation, selected by the board of trustees in the same manner as county depositories are selected by boards of supervisors pursuant to Section 27-105-305, located in its county or counties, except as otherwise provided in the following paragraphs.

At the regular December meeting of the board of trustees in 1995, or at any regular December meeting of the board thereafter, the board may, in its discretion, give notice by publication to all financial institutions in its county or counties whose accounts are insured by the Federal Deposit Insurance Corporation, that bids will be received from financial institutions at the following January meeting, or some subsequent meeting, for the privilege of keeping the hospital funds or any part thereof for a period of three (3) years, subject to earlier termination as authorized in this subsection. Such bids shall be submitted and accepted in the same manner as provided in Section 27-105-305. After the board has selected a depository or depositories as provided in this subsection, the board may, at any regular December meeting during the three-year period, give notice to and receive bids from financial institutions in the manner provided in this subsection, for the privilege of keeping the hospital funds or any part thereof for a period of three (3) years, subject to earlier termination as authorized in this subsection; and after receiving such bids, the board may reject all bids and elect to keep the funds in the current depository or depositories for the remainder of the three-year period under the terms originally agreed to with the depository or depositories, or if the board determines it to be in the best interests of the hospital, it may terminate the agreement with the current depository or depositories and select a new depository or depositories or the same depository or depositories from the bids received, choosing the bid or bids proposing the best terms for the hospital.

Such hospital funds, when so deposited, shall have the same security and protection as required for county funds in Section 27-105-315. When more than one (1) depository of whatever type is authorized, the commissioners or board of trustees may select one or more of such depositories and may apportion such deposits, at their or its discretion, if more than one (1) depository is selected. If there is no financial institution located within such county or counties, the commissioners or board of trustees of such hospital may select, in their or its discretion, a depository located outside of such county or counties.

The commissioners or boards of trustees of such community hospitals shall deposit the funds of such hospital into the depository selected under this section on the day when they are received or collected, or on the next business day thereafter.

(2) The commissioners or board of trustees of any such hospital may, in their or its discretion, maintain one or more special funds for the purpose of making necessary repairs, necessary purchases of equipment, meeting operational and maintenance expenses, allowing for depreciation, providing contingent funds for emergencies, funding hospital improvements, or providing for other special needs, and may deposit any part of such special fund in accordance with the provisions contained in subsection (1) for the deposit of other funds of such hospital. Said commissioners or board of trustees may also invest any part of such special fund, any funds derived from the sale of bonds, or any other funds in excess of the sums which will be required to meet the current needs and demands of no more than seven (7) business days in the following:

(a) In any bonds or other direct obligations of the United States of America or the State of Mississippi, or of any county, school district or municipality of this state, which such county, school district or municipal bonds have been approved by a reputable bond attorney or have been validated by decree of the chancery court;

(b) In obligations issued or guaranteed in full as to principal and interest by the United States of America which are subject to a repurchase agreement with a financial institution certified as a qualified depository;

(c) In any United States government agency, United States government instrumentality, or United States government sponsored enterprise obligations, the principal and interest of which are fully guaranteed by the government of the United States, such as the Government National Mortgage Association; or any United States government agency, United States government instrumentality, or United States government sponsored enterprise obligations, the principal and interest of which are guaranteed by any United States government agency, United States government instrumentality, or United States government sponsored enterprise. However, at no time shall the funds invested in United States government agency, United States government instrumentality, or United States government sponsored enterprise obligations enumerated in the preceding sentence exceed fifty percent (50%) of all monies invested with maturities of thirty (30) days or longer. The limitation set forth in the preceding sentence shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time;

(d) In an account or accounts in or through one or more financial institutions located in this state, and such funds when so invested shall have the same security and protection as required in Section 27-105-315;

(e) In an insured account or accounts in or through one or more financial institutions in this state whose accounts are insured by the Federal Deposit Insurance Corporation; provided that the amount in any single account shall not exceed the amount which at any one time is insured by the Federal Deposit Insurance Corporation;

(f) In any open-end or closed-end management-type investment company or investment trust registered under the provisions of 15 USCS Section 80(a)-1 et seq., provided that the portfolio of such investment company or investment trust is limited to direct obligations issued by the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and to repurchase agreements fully collateralized by direct obligations of the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and the investment company or investment trust takes delivery of such collateral for the repurchase agreement, either directly or through an authorized custodian. The total dollar amount of funds invested in all open-end and closed-end management-type investment companies and investment trusts at any one time shall not exceed twenty percent (20%) of the total dollar amount of funds invested under this subsection. The limitation set forth in the preceding sentence shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time;

(g) In a trust fund consisting of pooled or commingled funds of other hospitals, provided that:

(i) The portfolio of such trust fund may include investments in commercial paper and bankers acceptances or other short-term obligations issued by banks having one (1) of the two (2) highest short-term rating categories of either Standard Poor's Corporation or Moody's Investors Service, or corporate notes and bonds having one (1) of the three (3) highest long-term rating categories of either Standard Poor's Corporation or Moody's Investors Service, or in any open-ended or closed-ended management-type investment company or investment trust registered under the provisions of 15 USCS Section 80(a)-1 et seq., that would contain the aforementioned securities;

(ii) The portfolio of such trust fund is otherwise limited to investments authorized under this section; provided, however, that such investments shall not be subject to the percentage limitations set forth in subsection (2)(c) or subsection (2)(f) of this section;

(iii) Such trust is managed by an entity with trust powers or by an investment adviser registered with the Securities and Exchange Commission and retained as an investment manager by the commissioners or the board of trustees, as the case may be; and

(iv) Any investment manager approved by the commissioners or the board of trustees, as the case may be, shall invest such commingled funds as a fiduciary.

In addition, the commissioners or the board of trustees, in their or its discretion, may invest such funds as permitted by Section 19-9-29, 21-33-323, 27-105-33 or 37-59-43, as the same may be amended from time to time.

In any event, the bonds or obligations described in paragraph (a), (b) or (c) of this subsection (2) in which such funds are invested shall mature or be redeemable prior to the time the funds so invested will be needed for expenditures. When bonds or other obligations have been so purchased, the same may be sold or surrendered for redemption at any time by order or resolution of the commissioners or board of trustees of any such hospital, and the president or vice president, when authorized by such order or resolution, shall have the power and authority to execute all instruments and take such other action as may be necessary to effectuate the sale or redemption thereof.

When any such special fund is maintained for a purpose that requires contract letting or other action by the governing authority or authorities of the counties, cities, towns, supervisors districts or election districts, separately or jointly owning and operating such hospital, the commissioners or board of trustees of the hospital may transfer the whole or any part of any such special fund to the governing authority or authorities aforesaid on condition that the same be used for such purpose or returned to the transferring commissioners or board of trustees within the time designated in the conditions.

(3) All funds which shall be derived from any tax levied for the support and maintenance of any such hospital, and all other funds which may be made available for the support and maintenance of any such hospital by the state or any county or municipality, and all fees and other monies which may be collected or received by or for such hospital shall be placed in a special fund to the credit of such hospital within sixty (60) days after collection, and all such funds shall be expended and paid out upon the allowance of the board of trustees or commissioners of the hospital, as the case may be, and disbursed by checks signed by such person, officer or officers, as may be designated by such board of trustees or commissioners. Any officer or person who shall be designated by such board of trustees or commissioners to execute such checks shall furnish to such board of trustees or commissioners a good and sufficient surety bond in such amount as such board of trustees may fix, conditioned upon the faithful discharge of his duties, and the premium on such bond shall be paid from the funds available for the support and maintenance of such hospital. No funds shall be disbursed by any such hospital until the board of trustees or the commissioners thereof shall have adopted an annual budget and submitted same to the respective governing authority or authorities of the counties, cities, towns, supervisors districts, or election districts, separately or jointly owning and operating such hospital, and until such budget shall have been approved by the governing authority or authorities, as the case may be, which approval shall be evidenced by a proper order recorded upon the

minutes of each such authority. The accounts and records of any such hospital shall be audited by the State Department of Audit at the same time and in the same manner as the accounts and financial records of the county are audited, and for such purpose shall be considered in all respects as county accounts and records; however, this provision with regard to such audits shall be applicable only to hospitals owned wholly or in part by a county.

(4) The provisions of this section shall not apply to hospitals owned jointly by a city and county and operated by lease agreement or contract with a nonprofit hospital corporation.

SOURCES: Codes, 1942, § 9175.5; Laws, 1950, ch. 518, §§ 1-3; Laws, 1954, ch. 289, § 2; Laws, 1958, ch. 361; Laws, 1962, ch. 416; Laws, 1968, ch. 452, § 1; Laws, 1975, ch. 313; Laws, 1985, ch. 514, § 11; Laws, 1995, ch. 567, § 5; Laws, 1998, ch. 309, § 1; Laws, 1999, ch. 547, § 1; Laws, 2000, ch. 399, § 1; Laws, 2003, ch. 388, § 1; Laws, 2007, ch. 426, § 4, eff from and after passage (approved Mar. 22, 2007.)

Editor's Note — Sections 41-13-1 through 41-13-9, referred to in (1), were repealed by Laws of 1982, ch. 395, § 6, effective from and after July 1, 1982. For present provisions, see § 41-13-10 et seq.

Cross References — Authority of board of trustees of community hospital to deposit and invest funds in accordance with this section, see § 41-13-35.

Funds of community hospitals, see § 41-13-47.

Federal Aspects — Federal Deposit Insurance Corporation, see 12 USCS § 265 and § 1811 et seq.

Federal Savings and Loan Insurance Corporation, see 12 USCS § 1724 et seq.

Regulation of investment companies, see 15 USCS § 80a-1 et seq.

§ 27-105-367. Surplus funds; transfer to other funds; procedures; petition and election as to certain transfers; retirement of bonds and interest.

(1) The board of supervisors and municipal governing authorities, by order spread on their minutes, may transfer any balance remaining in a special fund in the treasury of the county or municipality, as the case may be, to the general fund to be used for general purposes for the succeeding fiscal year if the purpose for which the special fund was created has been fully carried out. Taxes imposed for the succeeding fiscal year for county or municipal general purposes shall be reduced by the amount of such balance transferred from the special fund to the general fund.

(2)(a) When there is any surplus monies less than Two Thousand Five Hundred Dollars ($2,500.00) in any special fund in the treasury of any county, road district, school district or other taxing district, or any municipality, and the board of supervisors, acting for the county or any road district, school district or other taxing district thereof, or the governing authorities of the municipality, as the case may be, shall desire to transfer all or part of the surplus monies in the special fund to some other fund of said county, road district, school district or other taxing district, or said municipality, as the case may be, such board of supervisors or the governing authorities of the municipality, as the case may be, shall cause an order to be entered on their minutes declaring their intention so to do, which said order shall show the name of the special fund, the amount of surplus monies to be transferred, and the name of the fund to which it is to be transferred, and same shall be transferred accordingly.

(b) Whenever the surplus monies in any special fund shall be Two Thousand Five Hundred Dollars ($2,500.00) or more, the board of supervisors or the governing authorities of the municipality, as the case may be, desiring to transfer such surplus monies, shall cause notice of same to be published in some newspaper published in the county, district or municipality, as the case may be, for three (3) consecutive weeks or, if there be no newspaper so published, then in some newspaper having a general circulation in the county, district or municipality. Thereafter, the monies shall be transferred as stated in the order not less than thirty (30) days after the first publication in a newspaper as above stated, unless within said thirty (30) days, a petition against the proposed transfer, signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors residing in the county, district or municipality, as the case may be, shall be filed with the governing body. In the event such petition is filed, an election on the question of such transfer shall be called and held as herein provided. Notice of the election and manner of conducting it shall be the same as other elections conducted within counties or municipalities, as the case may be. The ballot shall have printed thereon the amount of surplus monies sought to be transferred, the purpose for which such monies were authorized to be used and a statement that a surplus exists in such fund, and the purpose for which such monies are sought to be used pursuant to their transfer. If a majority of the qualified electors voting in the election vote in favor of the transfer of surplus monies, then such monies shall be transferred. If a majority of the qualified electors voting in the election do not vote in favor of such transfer of surplus monies, then such monies shall not be transferred. Provided, however, that if the question of transferring the balance remaining in a special fund, the purpose for which such fund was created having been fully carried out, fails at an election held on same, then such monies shall be invested as authorized by law and shall be calculated in the budget for the county or municipality, as the case may be, to be used for general purposes for the succeeding fiscal year. Taxes imposed for the succeeding fiscal year for county or municipal general purposes shall be reduced by the amount of such monies in such special fund.

(3)(a) When the balance remaining in any fund as set forth in subsections (1) and (2) represents a part of the proceeds of bonds sold for such county, district or municipality, and any part of said bonds or interest thereon remains unpaid, then such balance shall be transferred to the bond and interest fund to retire said bonds and interest due thereon, regardless of the amount thereof, without the necessity of publishing the order transferring same.

(b) Surplus monies in a bond and interest fund shall not be transferred unless there remains to the credit of such fund a sufficient balance to fully retire such bonds and interest thereon, including all redeemable bond coupons and the tax levy required to be made to pay principal of and interest on such bonds as they become due has been discontinued by the governing authorities of the county or municipality, as the case may be. Surplus monies in a bond and interest fund may be transferred to the general fund in accordance with subsection (1) of this section or to other funds in accordance with subsection (2)(b) of this section, regardless of the amount of the balance to be transferred.

SOURCES: Codes, 1942, § 9176; Laws, 1932, ch. 191; Laws, 1950, ch. 232; Laws, 1983, ch. 386, § 1, ch. 535, § 1; Laws, 1988, ch. 337, eff from and after passage (approved April 15, 1988).

Cross References — Deposit in special fund of proceeds of notes or certificates issued by board of trustees of school district in county system, see § 37-59-113.

ATTORNEY GENERAL OPINIONS

Board of supervisors is authorized to transfer surplus funds from interest and sinking fund to road district fund, as long as enough money is left in interest and sinking fund to pay off outstanding balance of bonds and interest as they become due, and as long as tax levy creating surplus funds is discontinued. Downs, June 13, 1991, A.G. Op. #91-0419.

Proceeds from sale of community hospital must be used to pay any debts or other liabilities of hospital having accrued to it during board's ownership period; once this purpose is accomplished, board may commence "surplus" fund transfer procedure. Brooks, Oct. 9, 1992, A.G. Op. #92-0726.

If purposes for which funds are no longer relevant as consequence of dissolution of emergency communications district, surplus funds must be transferred in manner set out in Miss. Code Section 27-105-367. Downs, Apr. 28, 1993, A.G. Op. #93-0217.

If resolution authorizing issuance of industrial bonds and expenditure of bond proceeds is sufficiently worded to permit expenditure of funds for specific bond purposes, as well as for related purposes, and county owned building falls within such related purposes, county could expend surplus monies directly from industrial bond fund for repair of building; otherwise, funds must be transferred to bond and interest sinking account as required by Section 19-9-23 provided board finds that purposes for which bonds were issued have been completed. Leggett, August 2, 1993, A.G. Op. #93-0529.

Where tax millage was imposed for purpose of borrowing certain sum of money for construction of particular structures and that money was never borrowed, accumulated millage funds were no longer needed for special purpose they were intended and levy was removed, Section 27-105-367(1) would permit accumulated funds to be transferred into general fund to be used for general purposes; if accumulated millage is transferred into fund other than general fund, notice and publication requirements of Section 27-105-367(2)(b) must be followed. Holland, Feb. 16, 1994, A.G. Op. #93-0778.

When a Metro Convention and Visitors Bureau expires by operation of law, any remaining surplus funds should be transferred back to the city for disposition under the statute. Horhn, April 17, 1998, A.G. Op. #98-0204.

Proceeds derived from the sale of industrial property are, after the payment of any outstanding obligations, surplus funds and may be transferred to the general county fund pursuant to Section 27-105-367. Carroll, Apr. 4, 2003, A.G. Op. 03-0121.

There is no authority to declare funds realized from a lawsuit settlement or court verdict as special funds. Accordingly, it would be impermissible to designate such funds as special funds, declare them surplus and use the funds for road and bridge purposes. Hemphill, Oct. 29, 2004, A.G. Op. 04-0498.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 46, 51.

§ 27-105-369. Acceptance by banks of checks payable to county, municipality, political subdivision or body politic.

All banks in this state are required to accept all checks and drafts that are payable to any county, municipality or any other political subdivision, or body politic, only for deposit to the credit of the particular payee to which such checks or drafts are payable, or to issue cashier's checks, certified checks and similar exchange in the name of and on behalf of the particular payee.

SOURCES: Laws, 1974, ch. 372, eff from and after passage (approved March 18, 1974).

Cross References — Acceptance by banks of checks payable to state agency, see § 27-105-37.

General regulations relating to banks and banking, see § 81-5-1 et seq.

§ 27-105-371. Duty to deposit funds into county depository; disposition of unidentifiable funds; duty of chancery clerk.

All county officials who receive funds under the authority of their office shall deposit such funds into a county depository. Any unidentifiable funds found by the county auditor or the State Auditor in the county depository shall be settled into the general fund of the county within thirty (30) days of the determination.

Any funds settled into the general fund under the authority of this section which are later identified shall be properly disbursed by the chancery clerk after the approval of the board of supervisors.

SOURCES: Laws, 1986, ch. 306, eff from and after October 1, 1986.

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

CHAPTER 106

Iran Divestment Act of 2015

Sec.
27-106-1. Short title.
27-106-3. Legislative findings.
27-106-5. Definitions.
27-106-7. Persons engaged in investments.
27-106-9. Duties of the Executive Director of the Department of Finance and Administration.
27-106-11. Annual reporting by the Executive Director of the Department of Finance and Administration.
27-106-13. Limitation on the Public Employees' Retirement System and State Treasury Investments.
27-106-15. Exception to investment prohibition.
27-106-17. Limitation of chapter due to fiduciary obligations.
27-106-19. Indemnification of employees and officials for compliance with this chapter.
27-106-21. Continued application of this chapter.
27-106-23. Notice to the Attorney General of the United States.
27-106-25. Severability.

§ 27-106-1. Short title.

This chapter shall be known and may be cited as the "Iran Divestment Act of 2015."

SOURCES: Laws, 2015, ch. 487, § 1, eff from and after July 1, 2015.

§ 27-106-3. Legislative findings.

(1) The Mississippi Legislature finds the following:

(a) Congress and the President have determined that the illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles, and its support of international terrorism represent a serious threat to the security of the United States, Israel and other allies of the United States in Europe, the Middle East and around the world.

(b) The International Atomic Energy Agency has called attention repeatedly to Iran's unlawful nuclear activities, and as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the Government of Iran to cease those activities and comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons.

(c) On July 1, 2010, President Barack Obama signed into law H.R. 2194, the "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public Law 111-195), which expressly authorizes states and local governments to prevent investment in, including prohibiting entry into or renewing contracts with, companies operating in Iran's energy sector with investments that have the result of directly or indirectly supporting the efforts of the Government of Iran to achieve nuclear weapons capability.

(d) The serious and urgent nature of the threat from Iran demands that states, local governments and private institutions work together with the federal government and American allies to do everything possible diplomatically, politically and economically to prevent Iran from acquiring nuclear weapons capability.

(e) Respect for human rights in Iran has deteriorated steadily, as demonstrated by transparently fraudulent elections and the brutal repression and murder, arbitrary arrests and show trials of peaceful dissidents.

(f) The concerns of the State of Mississippi regarding Iran are strictly the result of the actions of the Government of Iran and should not be construed as enmity towards the Iranian people.

(2) The intent of the Legislature is to implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195).

SOURCES: Laws, 2015, ch. 487, § 2, eff from and after July 1, 2015.

§ 27-106-5. Definitions.

As used in this chapter, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran.

(b) "Expense" means all explicit costs associated with divesting of investments, including, but not limited to, trading costs, brokerage commissions, and any realized losses, and all implicit costs, including, but not limited to, lost opportunity costs resulting from the prohibition from making certain investments.

(c) "Investment" means a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. The term "investment" does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments or the like.

(d) "Iran" includes the Government of Iran and any agency or instrumentality of Iran.

(e) "Person" means any of the following:

(i) A natural person, corporation, company, limited liability company, business association, partnership, society, trust or any other nongovernmental entity, organization or group; or

(ii) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. § 262r(c)(3)).

SOURCES: Laws, 2015, ch. 487, § 3, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors by inserting "or" at the end of paragraph (e)(i) and deleting "; or" at the end of paragraph (e)(ii). The Joint Committee ratified the correction at its August 5, 2016, meeting.

§ 27-106-7. Persons engaged in investments.

For purposes of this chapter, a person engages in investment activities in Iran if the person provides goods or services valued at Twenty Million Dollars ($20,000,000.00) or more in the energy sector of Iran, including a person that provides oil liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran.

SOURCES: Laws, 2015, ch. 487, § 4, eff from and after July 1, 2015.

§ 27-106-9. Duties of the Executive Director of the Department of Finance and Administration.

(1)(a) Before November 1, 2015, the Executive Director of the Department of Finance and Administration shall develop or contract to develop, using credible information available to the public, a list of persons determined to engage in investment activities in Iran, as described in this section. If the executive director elects to contract for the development of the list, the list must be developed before November 1, 2015. When completed, the list must be posted on the website of the Department of Finance and Administration.

(b) The executive director shall update the list by July 1st of every year.

(c) Before a person is included on the finalized initial list or updated list, the executive director must do all of the following:

(i) Provide ninety (90) days written notice of the executive director's intent to include the person on the list. The notice must inform the person that inclusion on the list will make the person ineligible to contract with the state. The notice also must specify that the person, if it ceases its engagement in investment activities in Iran, may be removed from the list.

(ii) The executive director shall provide a person with an opportunity to comment in writing that it is not engaged in investment activities in Iran. If the person demonstrates to the executive director that the person is not engaged in investment activities in Iran, the person shall not be included on the list.

(d) The executive director shall make every effort to avoid including a person on the list erroneously.

SOURCES: Laws, 2015, ch. 487, § 5, eff from and after July 1, 2015.

§ 27-106-11. Annual reporting by the Executive Director of the Department of Finance and Administration.

The executive director shall report annually to the Governor, Lieutenant Governor and Speaker of the House of Representatives before October 1 on the status of the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195), the "Iran Divestment Act of 2015," and any rules or regulations adopted thereunder.

SOURCES: Laws, 2015, ch. 487, § 6, eff from and after July 1, 2015.

§ 27-106-13. Limitation on the Public Employees' Retirement System and State Treasury Investments.

(1) The Public Employees' Retirement System and the State Treasurer may not invest funds with a person that is identified on a list created pursuant to Section 27-106-9 as a person engaging in investment activities in Iran, as described in Section 27-106-7.

(2) Any existing investments in violation of subsection (1) as of July 1, 2015, must be divested when prudent to do so but within one hundred twenty (120) days after the posting is made on the website of the Department of Finance and Administration.

SOURCES: Laws, 2015, ch. 487, § 7, eff from and after July 1, 2015.

§ 27-106-15. Exception to investment prohibition.

Notwithstanding Section 27-106-13, an investment may be made in a person engaged in investment activities in Iran, as described in Section 27-106-7, on a case by case basis, if:

(a) The investment activities in Iran were made before July 1, 2015, the investment activities in Iran have not been expanded or renewed after July 1, 2015, and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or

(b) The investor makes a determination that the investments are necessary in order to perform its functions.

SOURCES: Laws, 2015, ch. 487, § 8, eff from and after July 1, 2015.

§ 27-106-17. Limitation of chapter due to fiduciary obligations.

Nothing in this chapter requires the Public Employees' Retirement System of Mississippi or the State Treasurer or their agents to take any action as described in this chapter unless it is determined, in good faith, that: the action described in this chapter is consistent with the fiduciary responsibilities of the Public Employees' Retirement System of Mississippi or the State Treasurer or their agents; and there are appropriated funds of the state to absorb the expenses necessary to implement this chapter.

SOURCES: Laws, 2015, ch. 487, § 9, eff from and after July 1, 2015.

§ 27-106-19. Indemnification of employees and officials for compliance with this chapter.

Present, future and former board members, officers, employees and agents of the Public Employees' Retirement System and the Department of Finance and Administration, as well as present, future and former State Treasurers, officers and employees of the State Treasurer and agents retained by the State Treasurer, must be indemnified from the State General Fund and held harmless by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses and damages of any nature whatsoever that these present, future or former board members, officers, employees, agents or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce or eliminate investments pursuant to this chapter.

SOURCES: Laws, 2015, ch. 487, § 10, eff from and after July 1, 2015.

§ 27-106-21. Continued application of this chapter.

The restrictions established under this chapter apply only until:

(a) The President or Congress of the United States, by means including, but not limited to, legislation, executive order or written certification, declares that divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy; or

(b) The United States revokes its current sanctions against Iran.

SOURCES: Laws, 2015, ch. 487, § 11, eff from and after July 1, 2015.

§ 27-106-23. Notice to the Attorney General of the United States.

The Secretary of State, in consultation with the Mississippi Attorney General, shall submit to the Attorney General of the United States a written notice describing this chapter before August 1, 2015.

SOURCES: Laws, 2015, ch. 487, § 12, eff from and after July 1, 2015.

§ 27-106-25. Severability.

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase or word of this chapter is for any reason held to be unconstitutional or invalid, the holding shall not affect the constitutionality or validity of the remaining portions of this chapter. The Legislature hereby declares that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases or words thereof may be declared to be unconstitutional, invalid or otherwise ineffective.

SOURCES: Laws, 2015, ch. 487, § 13, eff from and after July 1, 2015.

CHAPTER 107

Disaster Relief

Hurricane Disaster of 1969 27-107-1
Federal Disaster Relief Act of 1970 27-107-31
Tornado Disaster of 1971 27-107-51
Flooding Disaster OF 1973 27-107-71
Tornado, Rain and Flooding Disaster of 1975 27-107-91
Excessive Rains and Floods of Spring of 1975 27-107-111
Tornado Disaster of March 12, 1975 27-107-131
Flooding Disaster of 1979 27-107-151
Jones County Tornado Disaster of February, 1987 27-107-201
Interstate Earthquake Emergency Compact 27-107-301
Emergency Aid to Local Governments 27-107-321

HURRICANE DISASTER OF 1969

Sec.

27-107-1. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.
27-107-3. Administrator of certain emergency appropriations.
27-107-5. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.
27-107-7. Time limitation on loan applications.
27-107-9. County and municipal authorities to maintain certain records.
27-107-11. Borrowings from state general and special fund agencies.
27-107-13. State bond commission's authority.
27-107-15. Adoption of rules and regulations.

§ 27-107-1. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.

For purposes of Sections 27-107-1 through 27-107-61, the term "commission of budget and accounting" or "commission" shall mean the state fiscal management board.

The Commission of Budget and Accounting is hereby expressly authorized and empowered to utilize any funds appropriated for such purposes to make grants to boards of supervisors, boards of trustees of public schools and junior colleges, and the mayor and board of aldermen or other governing body of incorporated municipalities for the purpose of assisting such county and municipal government authorities in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, ports and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of Hurricane Camille's unprecedented devastation to the State of Mississippi on Sunday and Monday, August 17-18, 1969. Provided, however, no application shall be considered until the applicant has obtained prior approval thereof by the governor's emergency council created by Executive Order No. 49, dated September 6, 1969.

SOURCES: Codes, 1942, § 9117-101; Laws, 1969 Ex Sess, ch. 33, § 1; Laws, 1984, ch. 488, § 181, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 27-107-3. Administrator of certain emergency appropriations.

The Commission of Budget and Accounting is hereby made the sole administrator of the appropriation enacted during the Extraordinary Session of 1969 to implement the provisions of Sections 27-107-1 through 27-107-15. It is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75 [repealed], Mississippi Code of 1972, in making findings of fact and determinations as to the extent and degree of the damages, destruction or loss to the public properties and the dollar value thereof described in the preceding section. It shall take into consideration the appropriate economic factors, present and potential losses in city, county and state taxes, and revenues of all types, existing and subsequent federal laws, funds and programs, and other relevant facts and fiscal data in determining the amount of state grants and loans and reasonable conditions of the grants and loans made to the governing authorities of eligible counties and municipalities and the boards of trustees of public schools and junior colleges which have suffered publicly owned property loss and economic losses as a direct result of Hurricane Camille.

SOURCES: Codes, 1942, § 9117-102; Laws, 1969 Ex Sess, ch. 33, § 2, eff from and after passage (approved October 9, 1969).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

§ 27-107-5. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.

(1) The Commission of Budget and Accounting, hereinafter referred to as "commission," with the concurrence of the state bond commission, is hereby authorized to borrow at one time or as needed the aggregate sum of five million

five hundred thousand dollars ($5,500,000.00) from one or multiples of "state general-fund agencies" or "state special-fund agencies" for the purpose of making loans to the eligible counties and municipalities, and said commission is hereby made the loan committee for such purposes as hereinafter provided. In making such loans, the commission is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75, Mississippi Code of 1972.

(2) Any loan made to a county or municipality under the provisions of this section are hereby made full faith and credit obligations of such counties and municipalities to the State of Mississippi and binding on the governing bodies obtaining such loans and their successors in office until repaid in full as to principal and interest thereon without regard to existing statutory limitations.

(3) The commission shall require a certified copy of a resolution, order, or other appropriate excerpts of the official minutes of the governing board or authorities, to be of such general form and content as the commission may deem appropriate, together with application forms for such state loans.

(4) All loans made under the provisions of this section shall be evidenced by negotiable promissory notes of the county or municipality to be in such standard form and content of acceptable banking standards, shall mature at such times, to bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer and clerk of the board of supervisors and the official seal, or the mayor or presiding officer and city clerk and the official seal.

(5) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third year	Three percent per annum
Fourth year	Four percent per annum
Fifth year	Five percent per annum
Sixth year and thereafter	Six percent per annum

(6) The governing authorities, borrowing money under Sections 27-107-1 through 27-107-15, are hereby authorized and empowered to levy not to exceed two mills levy on all of the taxable property of the county or municipality at any time after the loan is made, and said levy is hereby designated to repay the loan and it shall not be charged against the existing general laws as to limitations of millage for local governmental purposes.

(7) In the event that such loan has not been repaid or arrangements satisfactory to the commission have not been made to repay same within five (5) years from the making of such loan, the commission shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the chancery clerk or city clerk, as the case may be. If said default is not satisfied in full on or before the first day of August next following a local ad valorem tax of two mills, or so much thereof as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as deter-

mined by the commission, shall be levied by the county or municipality on all the taxable property in said county or city to be collected in the same manner, time and form as the existing local ad valorem tax levies, and shall be paid into the state treasury.

(8) The proceeds of all loans shall be used only for public governmental functions, services, payment of emergency indebtedness incurred as a direct result of Hurricane Camille, and expenditures authorized by general law and for matching federal grants, private gifts and donations, such federal grants, private gifts and donations being hereby authorized to be received and disbursed as public funds.

(9) The Commission of Budget and Accounting in determining the total amount of loan to each qualifying political subdivision shall take into consideration the extent and degree of the damage, destruction or loss to public properties and the dollar value thereof; the reasonable expectation of loss of present and future revenues; the destruction and damages to tax producing real and personal property; and all appropriate economic factors affecting the ability of said political subdivision to provide necessary public functions.

SOURCES: Codes, 1942, § 9117-103; Laws, 1969 Ex Sess, ch. 33, § 3, eff from and after passage (approved October 9, 1969).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in (1) have been repealed.

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-7. Time limitation on loan applications.

No application for loans or grants under authority of Sections 27-107-1 through 27-107-15 shall be filed after December 31, 1970.

SOURCES: Codes, 1942, § 9117-104; Laws, 1969 Ex Sess, ch. 33, § 4, eff from and after passage (approved October 9, 1969).

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-1.

§ 27-107-9. County and municipal authorities to maintain certain records.

The Commission of Budget and Accounting shall require boards of supervisors and the governing authorities of municipalities to maintain such minute books and other records as said commission deems reasonable and necessary for carrying out the purposes of Sections 27-107-1 through 27-107-15, including auditing by the state auditor of all expenditures of grants and loans made pursuant to the provisions of said sections, and also of federal grants, private gifts and donations authorized to be received hereunder.

SOURCES: Codes, 1942, § 9117-105; Laws, 1969 Ex Sess, ch. 33, § 5, eff from and after passage (approved October 9, 1969).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. Proof of Facts 3d, Meteorological Conditions at a Particular Time and Place, §§ 1 et seq.

§ 27-107-11. Borrowings from state general and special fund agencies.

The Commission of Budget and Accounting, with the concurrence of the state bond commission, is hereby authorized to borrow the sum of five million five hundred thousand dollars ($5,500,000.00) from one or a multiple of "state general-fund agencies" or "state special-fund agencies" at one time or as required for the purpose of carrying out the provisions of Section 27-107-5. Such borrowing shall be done by appropriate resolution or order of said commission, and certified copies of each such order spread upon its minutes shall be provided the executive head of the state agency, state treasurer, state auditor, attorney general and governor. Funds disbursed by the commission from said loan fund shall be as provided herein.

SOURCES: Codes, 1942, § 9117-106; Laws, 1969 Ex Sess, ch. 33, § 6, eff from and after passage (approved October 9, 1969).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-1.

§ 27-107-13. State bond commission's authority.

The state bond commission is hereby authorized and empowered to utilize any of its statutory powers, particularly Chapter 519, Laws of 1968, in carrying out its functions under Sections 27-107-1 through 27-107-15, and in the repayment of principal and interest on indebtedness due the State Treasury or any general-fund agency or special-fund agency.

SOURCES: Codes, 1942, § 9117-107; Laws, 1969 Ex Sess, ch. 33, § 7, eff from and after passage (approved October 9, 1969).

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-15. Adoption of rules and regulations.

The commission shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-1 through 27-107-15.

SOURCES: Codes, 1942, § 9117-108; Laws, 1969 Ex Sess, ch. 33, § 8, eff from and after passage (approved October 9, 1969).

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

FEDERAL DISASTER RELIEF ACT OF 1970

SEC.
27-107-31. Authority to accept and disburse funds.

§ 27-107-31. Authority to accept and disburse funds.

The board of supervisors, mayor and aldermen or other appropriate municipal governing body, board of trustees of school districts, county board of education, county and state port authorities, county development districts, and other public agencies at the community or state level which qualify for funds and other benefits under the United States "Disaster Relief Act of 1970", are hereby authorized to do and perform every act and deed necessary by such officers to make possible the receipt and disbursements of all such funds and related benefits made available by said act.

SOURCES: Codes, 1942, § 9117-131; Laws, 1971, ch. 383, § 1, eff from and after passage (approved March 16, 1971).

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

Federal Aspects — Disaster Relief Act of 1970, codified at 42 USCS §§ 4401, 4402 (Pub. L. 91-606, §§ 101, 102, 84 Stat. 1744), was repealed by Act May 22, 1974, Pub L. 93-288, 88 Stat. 164, effective April 1, 1974. For present similar provisions, see 42 USCS § 5121 et seq.

TORNADO DISASTER OF 1971

Sec.
27-107-51. Utilization of appropriated funds to assist local governing authorities to obtain federal funds.
27-107-53. Administration of appropriation.
27-107-55. Authority to borrow to make loans; form, interest, and repayment; conditions for granting and use of funds.
27-107-57. Counties and municipalities to maintain certain records.
27-107-59. Borrowing from state general and special fund agencies.
27-107-61. Authority of state bond commission.

§ 27-107-51. Utilization of appropriated funds to assist local governing authorities to obtain federal funds.

The Commission of Budget and Accounting is hereby expressly authorized and empowered to utilize any funds appropriated for such purposes which said sum shall not exceed five hundred thousand dollars ($500,000.00) to make grants to boards of supervisors, boards of trustees of public schools and junior colleges, and the mayor and board of aldermen or other governing body of incorporated municipalities for the purpose of assisting such county and municipal government authorities in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of a series of tornadoes which wrought unprecedented devastation to the State of Mississippi on Sunday, February 21, 1971.

SOURCES: Codes, 1942, § 9117-121; Laws, 1971, ch. 338, § 1, eff from and after passage (approved March 9, 1971).

Cross References — Definition of the terms “Commission of Budget and Accounting” and “commission,” see § 27-107-1.

§ 27-107-53. Administration of appropriation.

The Commission of Budget and Accounting is hereby made the sole administrator of the appropriation enacted during the regular session of 1971 to implement the provisions of Sections 27-107-51 through 27-107-61. It is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75 [repealed], Mississippi Code of 1972, in making findings of fact and determinations as to the extent and degree of the damages, destruction or loss to the public properties and the dollar value thereof described in the preceding section. It shall take into consideration the appropriate economic factors, present and potential losses in city, county and state taxes, and revenues of all types, existing and subsequent federal laws, funds and programs, and other relevant facts and fiscal data in determining the amount of state grants and loans and reasonable conditions of the grants and loans made to the governing authorities of eligible counties and municipalities and the boards of trustees of public schools and junior colleges which have suffered publicly owned property loss and economic losses as a direct result of tornado damages on February 21, 1971.

SOURCES: Codes, 1942, § 9117-122; Laws, 1971, ch. 338, § 2, eff from and after passage (approved March 9, 1971).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

§ 27-107-55. Authority to borrow to make loans; form, interest, and repayment; conditions for granting and use of funds.

(1) The Commission of Budget and Accounting, hereinafter referred to as "commission," with the concurrence of the state bond commission, is hereby authorized to borrow at one time or as needed the aggregate sum of five hundred thousand dollars ($500,000) from one or multiples of "state general fund agencies" or "state special fund agencies" for the purpose of making loans to the eligible counties and municipalities, and said commission is hereby made the loan committee for such purposes as hereinafter provided. In making such loans, the commission is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75, Mississippi Code of 1972.

(2) Any loan made to a county or municipality under the provisions of this section are hereby made full faith and credit obligations of such counties and municipalities to the State of Mississippi and binding on the governing bodies obtaining such loans and their successors in office until repaid in full as to principal and interest thereon without regard to existing statutory limitations.

(3) The commission shall require a certified copy of a resolution, order, or other appropriate excerpts of the official minutes of the governing board or authorities, to be of such general form and content as the commission may deem appropriate, together with application forms for such state loans.

(4) All loans made under the provisions of this section shall be evidenced by negotiable promissory notes of the county or municipality to be in such standard form and content of acceptable banking standards, shall mature at such times, to bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer and clerk of the board of supervisors and the official seal, or the mayor or presiding officer and city clerk and the official seal.

(5) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third year	Three percent per annum
Fourth year	Four percent per annum
Fifth year	Five percent per annum
Sixth year and thereafter	Six percent per annum

(6) The governing authorities, borrowing money under Sections 27-107-51 through 27-107-61, are hereby authorized and empowered to levy not to exceed two mills levy on all of the taxable property of the county or municipality at any time after the loan is made, and said levy is hereby designated to repay the loan and it shall not be charged against the existing general laws as to limitations of millage for local governmental purposes.

(7) In the event that such loan has not been repaid or arrangements satisfactory to the commission have not been made to repay same within five (5) years from the making of such loan, the commission shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the chancery clerk or city clerk, as the case may be. If said default is not satisfied in full on or before the first day of August next following, a local ad valorem tax of two mills or so much thereof as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as determined by the commission, shall be levied by the county or municipality on all the taxable property in said county or city to be collected in the same manner, time and form as the existing local ad valorem tax levies, and shall be paid into the state treasury.

(8) The proceeds of all loans shall be used only for public governmental functions, services, payment of emergency indebtedness incurred as a direct result of the tornadoes, and expenditures authorized by general law and for matching federal grants, private gifts and donations, such federal grants, private gifts and donations being hereby authorized to be received and disbursed as public funds.

(9) The Commission of Budget and Accounting in determining the total amount of loan to each qualifying political subdivision shall take into consideration the extent and degree of the damage, destruction or loss to public properties and the dollar value thereof; the reasonable expectation of loss of present and future revenues; the destruction and damages to tax producing real and personal property; and all appropriate economic factors affecting the ability of said political subdivision to provide necessary public functions. No application for loans or grants under authority of Sections 27-107-51 through 27-107-61 shall be filed after December 31, 1971.

SOURCES: Codes, 1942, § 9117-123; Laws, 1971, ch. 338, § 3, eff from and after passage (approved March 9, 1971).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

Borrowing from state general and special fund agencies, see § 27-107-59.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-57. Counties and municipalities to maintain certain records.

The Commission of Budget and Accounting shall require boards of supervisors and the governing authorities of municipalities to maintain such minute books and other records as said commission deems reasonable and necessary for carrying out the purposes of Sections 27-107-51 through 27-107-61, including auditing by the state auditor of all expenditures of grants and loans made pursuant to the provisions of Sections 27-107-51 through 27-107-61 and also of federal grants, private gifts and donations authorized to be received hereunder.

SOURCES: Codes, 1942, § 9117-124; Laws, 1971, ch. 338, § 4, eff from and after passage (approved March 9, 1971).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-1.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. Proof of Facts 3d, Meteorological Conditions at a Particular Time and Place, §§ 1 et seq.

§ 27-107-59. Borrowing from state general and special fund agencies.

The Commission of Budget and Accounting with the concurrence of the state bond commission is hereby authorized to borrow the sum of five hundred thousand dollars ($500.00) from one or a multiple of "state general fund agencies" or "state special fund agencies" at one time or as required for the purpose of carrying out the provisions of Section 27-107-55. Such borrowing shall be done by appropriate resolution or order of said commission, and certified copies of each such order spread upon its minutes shall be provided the executive head of the state agency, state treasurer, state auditor, attorney general and governor. Funds disbursed by the commission from said loan fund shall be as provided herein. The commission shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-51 through 27-107-61.

SOURCES: Codes, 1942, § 9117-125; Laws, 1971, ch. 338, § 5, eff from and after passage (approved March 9, 1971).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-1.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-61. Authority of state bond commission.

The state bond commission is hereby authorized and empowered to utilize any of its statutory powers, particularly Chapter 519, Laws of 1968, in carrying out its functions under Sections 27-107-51 through 27-107-61 and in the repayment of principal and interest on indebtedness due the state treasury or any general fund agency or special fund agency.

SOURCES: Codes, 1942, § 9117-126; Laws, 1971, ch. 338, § 6, eff from and after passage (approved March 9, 1971).

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-1.

State bond commission generally, see § 31-17-1 et seq.

FLOODING DISASTER OF 1973

SEC.
27-107-71. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.
27-107-73. Administrator of certain emergency appropriations.
27-107-75. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.
27-107-77. Time limitation on loan applications.
27-107-79. County and municipal authorities to maintain certain records.
27-107-81. Borrowing from state general and special fund agencies.
27-107-83. State bond commission's authority.
27-107-85. Adoption of rules and regulations.

§ 27-107-71. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.

For purposes of Sections 27-107-71 through 27-107-85, the term "Commission of Budget and Accounting" or "commission" shall mean the state fiscal management board.

The Commission of Budget and Accounting is hereby expressly authorized and empowered to utilize any funds appropriated for such purposes to make grants to boards of supervisors, boards of trustees of public schools and junior colleges, and the mayor and board of aldermen or other governing body of incorporated municipalities for the purpose of assisting such county and municipal government authorities in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, ports and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of the unprecedented devastation wrought by the excessive rain and floods of March, 1973, to the State of Mississippi.

SOURCES: Laws, 1973, ch. 464, § 1; Laws, 1984, ch. 488, § 182, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 27-107-73. Administrator of certain emergency appropriations.

The Commission of Budget and Accounting is hereby made the sole administrator of the appropriation enacted during the regular session of 1973 to implement the provisions of Sections 27-107-71 through 27-107-85. It is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75, in making findings of fact and determinations as to the extent and degree of the damages, destruction or loss to the public properties and the dollar value thereof described in the preceding section. It shall take into consideration the appropriate economic factors, present and potential losses in city, county and state taxes, and revenues of all types, existing and subsequent federal laws, funds and programs, and other relevant facts and fiscal data in determining the amount of state grants and loans and reasonable conditions of the grants and loans made to the governing authorities of eligible counties and municipalities and the boards of trustees of public schools and junior colleges which have suffered publicly owned property loss and economic losses as a direct result of the excessive rain or floods of March, 1973.

SOURCES: Laws, 1973, ch. 464, § 2, eff from and after passage (approved April 6, 1973).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-71.

§ 27-107-75. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.

(a) The Commission of Budget and Accounting hereinafter referred to as "commission," with the concurrence of the state bond commission, is hereby authorized to borrow at one (1) time or as needed the aggregate sum of five million five hundred thousand dollars ($5,500,000.00) from one or multiples of "state general fund agencies" or "state special fund agencies" for the purpose of making loans to the eligible counties and municipalities, and said commission is hereby made the loan committee for such purposes as hereinafter provided. In making such loans, the commission is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75.

(b) Any loan made to a county or municipality under the provisions of this section are hereby made full faith and credit obligations of such counties and municipalities to the State of Mississippi and binding on the governing bodies obtaining such loans and their successors in office until repaid in full as to principal and interest thereon without regard to existing statutory limitations.

(c) The commission shall require a certified copy of a resolution, order, or other appropriate excerpts of the official minutes of the governing board or authorities, to be of such general form and content as the commission may deem appropriate, together with application forms for such state loans.

(d) All loans made under the provisions of this section shall be evidenced by negotiable promissory notes of the county or municipality to be in such standard form and content of acceptable banking standards, shall mature at such times, to bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer and clerk of the board of supervisors and the official seal, or the mayor or presiding officer and city clerk and the official seal.

(e) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third (3rd) year	Three percent (3%) per annum
Fourth (4th) year	Four percent (4%) per annum
Fifth (5th) year	Five percent (5%) per annum
Sixth (6th) year and thereafter	Six percent (6%) per annum

(f) The governing authorities, borrowing money under Sections 27-107-71 through 27-107-85, are hereby authorized and empowered to levy not to exceed two (2) mills on all of the taxable property of the county or municipality at any time after the loan is made, and said levy is hereby designated to repay the loan and it shall not be charged against the existing general laws as to limitations of millage for local governmental purposes.

(g) In the event that such loan has not been repaid or arrangements satisfactory to the commission have not been made to repay same within five (5) years from the making of such loan, the commission shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the chancery clerk or city clerk, as the case may be. If said default is not satisfied in full on or before the first day of March next following, a local ad valorem tax of two (2) mills or so much thereof as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as determined by the commission, shall be levied by the county or municipality on all the taxable property in said county or city to be collected in the same manner, time and form as the existing local ad valorem tax levies, and shall be paid into the state treasury. Failure or refusal of any county or municipality to levy the tax hereinabove referred to or to otherwise discharge its obligation to the state shall forfeit the right of said county or municipality to receive reimbursement for homestead exemption until such time as its indebtedness has been discharged or arrangements to discharge said indebtedness satisfactorily to the commission have been made. Homestead exemption funds forfeited hereby shall upon demand by the commission made in writing upon the Mississippi State Tax Commission be paid to the commission and applied to the discharge of the obligation.

(h) The proceeds of all loans shall be used only for public governmental functions, services, payment of emergency indebtedness incurred as a direct result of the excessive rain or floods of March, 1973, and expenditures authorized by general law and for matching federal grants, private gifts and donations, such federal grants, private gifts and donations being hereby authorized to be received and disbursed as public funds.

(i) The Commission of Budget and Accounting in determining the total amount of loan to each qualifying political subdivision shall take into consideration the extent and degree of the damage, destruction or loss to public properties and the dollar value thereof; the reasonable expectation of loss of present and future revenues; the destruction and damages to tax producing real and personal property; and all appropriate economic factors affecting the ability of said political subdivision to provide necessary public functions.

SOURCES: Laws, 1973, ch. 464, § 3, eff from and after passage (approved April 6, 1973).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-71.

§ 27-107-77. Time limitation on loan applications.

No application for loans or grants under authority of Sections 27-107-71 through 27-107-85 shall be filed after March 31, 1974, and no application for a loan or grant shall be approved after August 31, 1974.

SOURCES: Laws, 1973, ch. 464, § 4; Laws, 1974, ch. 313, eff from and after passage (approved Feb. 27, 1974).

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-71.

§ 27-107-79. County and municipal authorities to maintain certain records.

The Commission of Budget and Accounting shall require boards of supervisors and the governing authorities of municipalities to maintain such minute books and other records as said commission deems reasonable and necessary for carrying out the purposes of Sections 27-107-71 through 27-107-85, including auditing by the state auditor of all expenditures of grants and loans made pursuant to the provisions of said sections and also of federal grants, private gifts and donations authorized to be received hereunder.

SOURCES: Laws, 1973, ch. 464, § 5, eff from and after passage (approved April 6, 1973).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-71.

§ 27-107-81. Borrowing from state general and special fund agencies.

The Commission of Budget and Accounting with the concurrence of the state bond commission is hereby authorized to borrow the sum of five million five hundred thousand dollars ($5,500,000.00) from one or a multiple of "state general fund agencies" or "state special fund agencies" at one (1) time or as required for the purpose of carrying out the provisions of Section 27-107-75. Such borrowing shall be done by appropriate resolution or order of said commission, and certified copies of each such order spread upon its minutes shall be provided the executive head of the state agency, state treasurer, state auditor, attorney general and governor. Funds disbursed by the commission from said loan fund shall be as provided herein.

SOURCES: Laws, 1973, ch. 464, § 6, eff from and after passage (approved April 6, 1973).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-71.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-83. State bond commission's authority.

The state bond commission is hereby authorized and empowered to utilize any of its statutory powers in carrying out its functions under Sections 27-107-71 through 27-107-85 and in the repayment of principal and interest on indebtedness due the state treasury or any general fund agency or special fund agency.

SOURCES: Laws, 1973, ch. 464, § 7, eff from and after passage (approved April 6, 1973).

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-71.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-85. Adoption of rules and regulations.

The commission shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-71 through 27-107-85.

SOURCES: Laws, 1973, ch. 464, § 8, eff from and after passage (approved April 6, 1973).

Cross References — Definition of the terms "Commission of Budget and Accounting" and commission, see § 27-107-71.

TORNADO, RAIN AND FLOODING DISASTER OF 1975

Sec.
27-107-91. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.
27-107-93. Administrator of certain emergency appropriations.
27-107-95. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.
27-107-97. Time limitation on loan applications.
27-107-99. County and municipal authorities to maintain certain records.
27-107-101. Borrowing from state general and special fund agencies.
27-107-103. State bond commission's authority.
27-107-105. Adoption of rules and regulations.

§ 27-107-91. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.

For purposes of Sections 27-107-91 through 27-107-105, the term "commission of budget and accounting" or "commission" shall mean the state fiscal management board.

The Commission of Budget and Accounting is hereby expressly authorized and empowered to utilize any funds appropriated for such purposes which said sum shall not exceed five hundred thousand dollars ($500,000.00) to make grants to boards of supervisors, boards of trustees of public schools and junior colleges, and the mayor and board of aldermen or other governing body of incorporated municipalities for the purpose of assisting such county and municipal government authorities in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, ports and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of the unprecedented devastation wrought by the excessive rain, floods and tornadoes of January, 1975 to the State of Mississippi.

SOURCES: Laws, 1975, ch. 305, § 1; Laws, 1984, ch. 488, § 183, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 27-107-93. Administrator of certain emergency appropriations.

The Commission of Budget and Accounting is hereby made the sole administrator of the appropriation enacted during the regular session of 1975 to implement the provisions of Sections 27-107-91 through 27-107-105. It is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75 in making findings of fact and determinations as to the extent and degree of the damages, destruction or loss to the public properties and the dollar value thereof described in the preceding section. It shall take into consideration the appropriate economic factors, present and potential losses in city, county and state taxes, and revenues of all types, existing and subsequent federal laws, funds and programs, and other relevant facts and fiscal data in determining the amount of state grants and loans and reasonable conditions of grants and loans made to the governing authorities of eligible counties and municipalities and the boards of trustees of public schools and junior colleges which have suffered publicly owned property loss and economic losses as a direct result of the tornadoes of January 1975.

SOURCES: Laws, 1975, ch. 305, § 2, eff from and after passage (approved February 11, 1975).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-91.

§ 27-107-95. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.

(1) The Commission of Budget and Accounting, hereinafter referred to as "commission," with the concurrence of the state bond commission, is hereby authorized to borrow at one (1) time or as needed the aggregate sum of five hundred thousand dollars ($500,000.00) from one (1) or multiples of "state general fund agencies" or "state special fund agencies" for the purpose of making loans to the eligible counties and municipalities, and said commission is hereby made the loan committee for such purposes as hereinafter provided. In making such loans, the commission is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75.

(2) Any loan made to a county or municipality under the provisions of this section are hereby made full faith and credit obligations of such counties and municipalities to the State of Mississippi and binding on the governing bodies obtaining such loans and their successors in office until repaid in full as to principal and interest thereon without regard to existing statutory limitations.

(3) The commission shall require a certified copy of a resolution, order, or other appropriate excerpts of the official minutes of the governing board or authorities, to be of such general form and content as the commission may deem appropriate, together with application forms for such state loans.

(4) All loans made under the provisions of this section shall be evidenced by negotiable promissory notes of the county or municipality to be in such standard form and content of acceptable banking standards, shall mature at such times, to bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer and clerk of the board of supervisors of the official seal, or the mayor or presiding officer and city clerk and the official seal.

(5) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third (3rd) year	Three percent (3%) per annum
Fourth (4th) year	Four percent (4%) per annum
Fifth (5th) year	Five percent (5%) per annum

Sixth (6th) year and thereafter	Six percent (6%) per annum

(6) The governing authorities, borrowing money under Sections 27-107-91 through 27-107-105, are hereby authorized and empowered to levy not to exceed two (2) mills on all of the taxable property of the county or municipality at any time after the loan is made, and said levy is hereby designated to repay the loan and it shall not be charged against the existing general laws as to limitations of millage for local governmental purposes.

(7) In the event that such loan has not been repaid or arrangements satisfactory to the commission have not been made to repay same within five (5) years from the making of such loan, the commission shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the chancery clerk or city clerk, as the case may be. If said default is not satisfied in full on or before the first (1st) day of March next following, a local ad valorem tax of two (2) mills or so much thereof as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as determined by the commission, shall be levied by the county or municipality on all the taxable property in said county or city to be collected in the same manner, time and form as the existing local ad valorem tax levies, and shall be paid into the state treasury. Failure or refusal of any county or municipality to levy the tax hereinabove referred to or to otherwise discharge its obligation to the state shall forfeit the right of said county or municipality to receive reimbursement for homestead exemption until such time as its indebtedness has been discharged or arrangements to discharge said indebtedness satisfactorily to the commission have been made. Homestead exemption funds forfeited hereby shall upon demand by the commission made in writing upon the Mississippi State Tax Commission be paid to the commission and applied to the discharge of the obligation.

(8) The proceeds of all loans shall be used only for public governmental functions, services, payment of emergency indebtedness incurred as a direct result of the excessive rain, floods or tornadoes of January 1975, and expenditures authorized by general law and for matching federal grants, private gifts and donations, such federal grants, private gifts and donations being hereby authorized to be received and disbursed as public funds.

(9) The commission of budget and accounting in determining the total amount of loan to each qualifying political subdivision shall take into consideration the extent and degree of the damage, destruction or loss to public properties and the dollar value thereof; the reasonable expectation of loss of present and future revenues; the destruction and damages to tax producing real and personal property; and all appropriate economic factors affecting the ability of said political subdivision to provide necessary public functions.

SOURCES: Laws, 1975, ch. 305, § 3, eff from and after passage (approved February 11, 1975).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Definition of terms "Commission of Budget and Accounting" and "commission," see § 27-107-91.

§ 27-107-97. Time limitation on loan applications.

No application for loans or grants under authority of Sections 27-107-91 through 27-107-105 shall be filed after April 30, 1975, and no application for a loan or grant shall be approved after June 30, 1975.

SOURCES: Laws, 1975, ch. 305, § 4, eff from and after passage (approved February 11, 1975).

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-91.

§ 27-107-99. County and municipal authorities to maintain certain records.

The Commission of Budget and Accounting shall require boards of supervisors and the governing authorities of municipalities to maintain such minute books and other records as said commission deems reasonable and necessary for carrying out the purposes of Sections 27-107-91 through 27-107-105 including auditing by the state auditor of all expenditures of grants and loans made pursuant to the provisions of said sections and also of federal grants, private gifts and donations authorized to be received hereunder.

SOURCES: Laws, 1975, ch. 305, § 5, eff from and after passage (approved February 11, 1975).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-91.

§ 27-107-101. Borrowing from state general and special fund agencies.

The commission of budget and accounting with the concurrence of the state bond commission is hereby authorized to borrow the sum of five hundred thousand dollars ($500,000.00) from one (1) or a multiple of "state general fund agencies" or "state special fund agencies" at one (1) time or as required for the purpose of carrying out the provisions of Section 27-107-95. Such borrowing shall be done by appropriate resolution or order of said commission, and certified copies of each such order spread upon its minutes shall be provided the executive head of the state agency, state treasurer, state auditor, attorney general and governor. Funds disbursed by the commission from said loan shall be provided herein.

SOURCES: Laws, 1975, ch. 305, § 6, eff from and after passage (approved February 11, 1975).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of the terms "commission of budget and accounting" and "commission," see § 27-107-91.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-103. State bond commission's authority.

The state bond commission is hereby authorized and empowered to utilize any of its statutory powers in carrying out its functions under Sections 27-107-91 through 27-107-105 and in the repayment of principal and interest on indebtedness due the state treasury or any general fund agency or special fund agency.

SOURCES: Laws, 1975, ch. 305, § 7, eff from and after passage (approved February 11, 1975).

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-91.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-105. Adoption of rules and regulations.

The commission shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-91 through 27-107-105.

SOURCES: Laws, 1975, ch. 305, § 8, eff from and after passage (approved February 11, 1975).

Cross References — Definition of the terms "Commission of Budget and Accounting" and "commission," see § 27-107-91.

EXCESSIVE RAINS AND FLOODS OF SPRING OF 1975

SEC.
27-107-111. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.
27-107-113. Administrator of certain emergency appropriations.
27-107-115. Authority to borrow monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.
27-107-117. Time limitation on loan applications.
27-107-119. County and municipal authorities to maintain certain records.
27-107-121. Borrowing from state general and special fund agencies.
27-107-123. State bond commission's authority.
27-107-125. Adoption of rules and regulations.
27-107-127. Expenditure of public funds and utilization of public equipment and facilities for evacuation of endangered persons and protection of private property.

§ 27-107-111. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.

For purposes of Sections 27-107-111 through 27-107-127, the term "commission of budget and accounting" or "commission" shall mean the state fiscal management board.

The Commission of Budget and Accounting is hereby expressly authorized and empowered to utilize any funds appropriated for such purposes to make grants to boards of supervisors, boards of trustees of public schools and junior colleges, and the mayor and board of aldermen or other governing body of incorporated municipalities for the purpose of assisting such county and municipal government authorities in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, ports and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of the unprecedented devastation wrought by the excessive rain and floods of the spring of 1975 to the State of Mississippi.

SOURCES: Laws, 1975, ch. 441, § 1; Laws, 1984, ch. 488, § 184, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 27-107-113. Administrator of certain emergency appropriations.

The Commission of Budget and Accounting is hereby made the sole administrator of the appropriation enacted during the regular session of 1975 to implement the provisions of Sections 27-107-111 through 27-107-125. It is authorized to utilize any of its general powers provided by Chapter 496, Laws of 1962, as amended, appearing as Sections 27-103-1 through 27-103-71, in making findings of fact and determinations as to the extent and degree of the damages, destruction or loss to the public properties and the dollar value thereof described in the preceding section. It shall take into consideration the appropriate economic factors, present and potential losses in city, county and state taxes, and revenues of all types, existing and subsequent federal laws, funds and programs, and other relevant facts and fiscal data in determining the amount of state grants and loans and reasonable conditions of the grants and loans made to the governing authorities of eligible counties and municipalities and the boards of trustees of public schools and junior colleges which have suffered publicly owned property loss and economic losses as a direct result of the excessive rain or floods of the spring of 1975.

SOURCES: Laws, 1975, ch. 441, § 2, eff from and after passage (approved April 1, 1975).

Editor's Note — Sections 27-103-1 through 27-103-71 referred to in this section were repealed by Laws of 1984, ch. 488, § 334, effective from and after July 1, 1984.

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-111.

§ 27-107-115. Authority to borrow monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.

(1) The Commission of Budget and Accounting, hereinafter referred to as "commission," with the concurrence of the state bond commission, is hereby authorized to borrow at one (1) time or as needed the aggregate sum of five million five hundred thousand dollars ($5,500,000.00) from one or multiples of "state general fund agencies" or "state special fund agencies" for the purpose of making loans to eligible counties and municipalities, and said commission is hereby made the loan committee for such purposes as hereinafter provided. In making such loans, the commission is authorized to utilize any of its general powers provided by Chapter 496, Laws of 1962, as amended, appearing as Sections 27-103-1 through 27-103-71.

(2) Any loans made to a county or municipality under the provisions of this section are hereby made full faith and credit obligations of such counties and municipalities to the State of Mississippi and binding on the governing bodies obtaining such loans and their successors in office until repaid in full as to principal and interest thereon without regard to existing statutory limitations.

(3) The commission shall require a certified copy of a resolution, order or other appropriate excerpts of the official minutes of the governing board or authorities, to be of such general form and content as the commission may deem appropriate, together with application forms for such state loans.

(4) All loans made under the provisions of this section shall be evidenced by negotiable promissory notes of the county or municipality to be in such standard form and content of acceptable banking standards, shall mature at such times, to bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer and clerk of the board of supervisors and the official seal, or the mayor or presiding officer and city clerk and the official seal.

(5) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third year	Three percent (3%) per annum
Fourth year	Four percent (4%) per annum
Fifth year	Five percent (5%) per annum
Sixth year and thereafter	Six percent (6%) per annum

(6) The governing authorities, borrowing money under Sections 27-107-111 through 27-107-125, are hereby authorized and empowered to levy not to exceed two (2) mills on all of the taxable property of the county or municipality at any time after the loan is made, and said levy is hereby designated to repay the loan and it shall not be charged against the existing general laws as to limitations of millage for local governmental purposes.

(7) In the event that such loan has not been repaid or arrangements satisfactory to the commission have not been made to repay same within five (5) years from the making of such loan, the commission shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the chancery clerk or city clerk, as the case may be. If said default is not satisfied in full on or before the first day of March next following, a local ad valorem tax of two (2) mills or so much thereof as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as determined by the commission, shall be levied by the county or municipality on all the taxable property in said county or city to be collected in the same manner, time and form as the existing local ad valorem tax levies, and shall be paid into the state treasury. Failure or refusal of any county or municipality to levy the tax hereinabove referred to or to otherwise discharge its obligation to the state shall forfeit the right of said county or municipality to receive reimbursement for homestead exemption until such time as its indebtedness has been discharged or arrangements to discharge said indebtedness satisfactorily to the commission have been made. Homestead exemption funds forfeited hereby shall, upon demand by the commission made in writing upon the Mississippi State Tax Commission, be paid to the commission and applied in the discharge of the obligation.

(8) The proceeds of all loans shall be used only for public governmental functions, services, payment of emergency indebtedness incurred as a direct result of the excessive rain or floods of the spring of 1975, and expenditures authorized by general law and for matching federal grants, private gifts and donations, such federal grants, private gifts and donations being hereby authorized to be received and disbursed as public funds.

(9) The Commission of Budget and Accounting in determining the total amount of loan to each qualifying political subdivision shall take into consideration the extent and degree of the damage, destruction or loss to public properties and the dollar value thereof; the reasonable expectation of loss of present and future revenues; the destruction and damages to tax-producing real and personal property; and all appropriate economic factors affecting the ability of said political subdivision to provide necessary public functions.

SOURCES: Laws, 1975, ch. 441, § 3, eff from and after passage (approved April 1, 1975).

Editor's Note — Sections 27-103-1 through 27-103-71 referred to in (1) were repealed by Laws of 1984, ch. 488, § 334, eff from and after July 1, 1984.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-111.

§ 27-107-117. Time limitation on loan applications.

No application for loans or grants under authority of Sections 27-107-111 through 27-107-125 shall be filed after January 20, 1976, and no application for a loan or grant shall be approved after March 31, 1976.

SOURCES: Laws, 1975, ch. 441, § 4, eff from and after passage (approved April 1, 1975).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-111.

§ 27-107-119. County and municipal authorities to maintain certain records.

The Commission of Budget and Accounting shall require boards of supervisors and the governing authorities of municipalities to maintain such minute books and other records as said commission deems reasonable and necessary for carrying out the purposes of Sections 27-107-111 through 27-107-125, including auditing by the state auditor of all expenditures of grants and loans made pursuant to the provisions of said section and also of federal grants, private gifts and donations authorized to be received hereunder.

SOURCES: Laws, 1975, ch. 441, § 5, eff from and after passage (approved April 1, 1975).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "Commission of Budget and Accounting" and "commission", see § 27-107-111.

§ 27-107-121. Borrowing from state general and special fund agencies.

The Commission of Budget and Accounting, with the concurrence of the state bond commission, is hereby authorized to borrow the sum of five million five hundred thousand dollars ($5,500,000.00) from one or a multiple of "state general fund agencies" or "state special fund agencies" at one (1) time or as required for the purpose of carrying out the provisions of Section 27-107-115. Such borrowing shall be done by appropriate resolution or order of said commission, and certified copies of each such order spread upon its minutes shall be provided the executive head of the state agency, state treasurer, state auditor, attorney general and governor. Funds disbursed by the commission from said loan fund shall be as provided herein.

SOURCES: Laws, 1975, ch. 441, § 6, eff from and after passage (approved April 1, 1975).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-111.

State bond commission generally, see § 31-17-1 et seq.

§ 27-107-123. State bond commission's authority.

The state bond commission is hereby authorized and empowered to utilize any of its statutory powers in carrying out its functions under Sections 27-107-111 through 27-107-125 and in the repayment of principal and interest on indebtedness due the state treasury or any general fund agency or special fund agency.

SOURCES: Laws, 1975, ch. 441, § 7, eff from and after passage (approved April 1, 1975).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-111.

§ 27-107-125. Adoption of rules and regulations.

The commission shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-111 through 27-107-125.

SOURCES: Laws, 1975, ch. 441, § 8, eff from and after passage (approved April 1, 1975).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-111.

§ 27-107-127. Expenditure of public funds and utilization of public equipment and facilities for evacuation of endangered persons and protection of private property.

The board of supervisors of any county, the governing authorities of any municipality, the board of trustees of any public school district and the governing authorities of any other political subdivisions are hereby authorized and empowered to expend public funds and to utilize public equipment and facilities for the purposes of evacuation of persons endangered and for the protection of private property damaged or threatened by the flooding of the Spring of 1975 in any area declared by the governor to be under a state of emergency because of said flooding; provided, further, that the authority and powers set forth by this section shall expire on September 30, 1975.

SOURCES: Laws, 1975, ch. 443, eff from and after passage (approved April 1, 1975).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-111.

TORNADO DISASTER OF MARCH 12, 1975

SEC.
27-107-131. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.
27-107-133. Administrator of certain emergency appropriations.
27-107-135. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.
27-107-137. Time limitation on loan applications.
27-107-139. County and municipal authorities to maintain certain records.
27-107-141. Borrowing from state general and special fund agencies.
27-107-143. State bond commission's authority.
27-107-145. Adoption of rules and regulations.

§ 27-107-131. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.

For purposes of Sections 27-107-131 through 27-107-145, the term "commission of budget and accounting" or "commission" shall mean the state fiscal management board.

The Commission of Budget and Accounting is hereby expressly authorized and empowered to utilize any funds appropriated for such purposes to make grants to boards of supervisors, boards of trustees of public schools and junior colleges, and the mayor and board of aldermen or other governing body of incorporated municipalities for the purpose of assisting such county and municipal government authorities in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, ports and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of the unprecedented devastation wrought by the tornado of March 12, 1975.

SOURCES: Laws, 1975, ch. 458, § 1; Laws, 1984, ch. 488, § 185, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 27-107-133. Administrator of certain emergency appropriations.

The Commission of Budget and Accounting is hereby made the sole administrator of the appropriation enacted during the regular session of 1975 to implement the provisions of Sections 27-107-131 through 27-107-145. It is authorized to utilize any of its general powers provided by Sections 27-103-1 through 27-103-75 in making findings of fact and determinations as to the extent and degree of the damages, destruction or loss to the public properties and the dollar value thereof described in the preceding section. It shall take into consideration the appropriate economic factors, present and potential, losses in city, county and state taxes, and revenues of all types, existing and subsequent federal laws, funds and programs, and other relevant facts and fiscal data in determining the amount of state grants and loans and reasonable conditions of the grants and loans made to the governing authorities of eligible counties and municipalities and the boards of trustees of public schools and junior colleges which have suffered publicly owned property loss and economic losses as a direct result of the tornado of March 12, 1975.

SOURCES: Laws, 1975, ch. 458, § 2, eff from and after passage (approved April 3, 1975).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-131.

§ 27-107-135. Authority to borrow certain monies in order to make loans to counties and municipalities; conditions as to loans and their repayment.

(1) The Commission of Budget and Accounting hereinafter referred to as "commission," with the concurrence of the state bond commission, is hereby authorized to borrow at one (1) time or as needed the aggregate sum of one hundred fifty thousand dollars ($150,000.00) from one or multiples of "state general fund agencies" or "state special fund agencies" for the purpose of making loans to the eligible counties and municipalities, and said commission is hereby made the loan committee for such purposes as hereinafter provided. In making such loans, the commission is authorized to utilize any of its general powers provided in Sections 27-103-1 through 27-103-75.

(2) Any loan made to a county or municipality under the provisions of this section are hereby made full faith and credit obligations of such counties and municipalities to the State of Mississippi and binding on the governing bodies obtaining such loans and their successors in office until repaid in full as to principal and interest thereon without regard to existing statutory limitations.

(3) The commission shall require a certified copy of a resolution, order or other appropriate excerpts of the official minutes of the governing board or authorities, to be of such general form and content as the commission may deem appropriate, together with application forms for such state loans.

(4) All loans made under the provisions of this section shall be evidenced by negotiable promissory notes of the county or municipality to be in such standard form and content of acceptable banking standards, shall mature at such times, to bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer and clerk of the board of supervisors and the official seal, or the mayor or presiding officer and city clerk and the official seal.

(5) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third year	Three percent (3%) per annum
Fourth year	Four percent (4%) per annum
Fifth year	Five percent (5%) per annum
Sixth year and thereafter	Six percent (6%) per annum

(6) The governing authorities, borrowing money under Sections 27-107-131 through 27-107-145, are hereby authorized and empowered to levy not to exceed two (2) mills on all of the taxable property of the county or municipality at any time after the loan is made, and said levy is hereby designated to repay the loan and it shall not be charged against the existing general laws as to limitations of millage for local governmental purposes.

(7) In the event that such loan has not been repaid or arrangements satisfactory to the commission have not been made to repay same within five (5) years from the making of such loan, the commission shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the chancery clerk or city clerk, as the case may be. If said default is not satisfied in full on or before the first day of March next following, a local ad valorem tax of two (2) mills or so much thereof as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as determined by the commission shall be levied by the county or municipality on all the taxable property in said county or city to be collected in the same manner, time and form as the existing local ad valorem tax levies, and shall be paid into the state treasury. Failure or refusal of any county or municipality to levy the tax hereinabove referred to or to otherwise discharge its obligation to the state shall forfeit the right of said county or municipality to receive reimbursement for homestead exemption until such time as its indebtedness has been discharged or arrangements to discharge said indebtedness satisfactorily to the commission have been made. Homestead exemption funds forfeited hereby shall, upon demand by the commission made in writing upon the Mississippi State Tax Commission, be paid to the commission and applied to the discharge of the obligation.

(8) The proceeds of all loans shall be used only for public governmental functions, services, payment of emergency indebtedness incurred as a direct result of the tornado of March 12, 1975, and expenditures authorized by general law and for matching federal grants, private gifts and donations, such federal grants, private gifts and donations being hereby authorized to be received and disbursed as public funds.

(9) The Commission of Budget and Accounting in determining the total amount of loan to each qualifying political subdivision shall take into consideration the extent and degree of the damage, destruction or loss to public properties and the dollar value thereof; the reasonable expectation of loss of present and future revenues; the destruction and damages to tax-producing real and personal property; and all appropriate economic factors affecting the ability of said political subdivision to provide necessary public functions.

SOURCES: Laws, 1975, ch. 458, § 3, eff from and after passage (approved April 3, 1975).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-131.

§ 27-107-137. Time limitation on loan applications.

No application for loans or grants under authority of Sections 27-107-131 through 27-107-145 shall be filed after April 30, 1975, and no application for a loan or grant shall be approved after June 30, 1975.

SOURCES: Laws, 1975, ch. 458, § 4, eff from and after passage (approved April 3, 1975).

Cross References — Definition of "commission of budget and accounting" and "commission," see § 27-107-131.

§ 27-107-139. County and municipal authorities to maintain certain records.

The Commission of Budget and Accounting shall require boards of supervisors and the governing authorities of municipalities to maintain such minute books and other records as said commission deems reasonable and necessary for carrying out the purposes of Sections 27-107-131 through 27-107-145, including auditing by the state auditor of all expenditures of grants and loans made pursuant to the provisions of said sections and also of federal grants, private gifts and donations authorized to be received hereunder.

SOURCES: Laws, 1975, ch. 458, § 5, eff from and after passage (approved April 3, 1975).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "commission of budget and accounting" and "commission," see § 27-107-131.

§ 27-107-141. Borrowing from state general and special fund agencies.

The Commission of Budget and Accounting, with the concurrence of the state bond commission, is hereby authorized to borrow the sum of one hundred fifty thousand dollars ($150,000.00) from one or a multiple of "state general fund agencies" or "state special fund agencies" at one (1) time or as required for the purpose of carrying out the provisions of Section 27-107-135. Such borrowing shall be done by appropriate resolution or order of said commission, and certified copies of each such order spread upon its minutes shall be provided the executive head of the state agency, state treasurer, state auditor, attorney general and governor. Funds disbursed by the commission from said loan fund shall be as provided herein.

SOURCES: Laws, 1975, ch. 458, § 6, eff from and after passage (approved April 3, 1975).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-131.

§ 27-107-143. State bond commission's authority.

The State Bond Commission is hereby authorized and empowered to utilize any of its statutory powers in carrying out its functions under Sections 27-107-131 through 27-107-145 and in the repayment of principal and interest on indebtedness due the state treasury or any general fund agency or special fund agency.

SOURCES: Laws, 1975, ch. 458, § 7, eff from and after passage (approved April 3, 1975).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-131.

§ 27-107-145. Adoption of rules and regulations.

The commission shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-131 through 27-107-145.

SOURCES: Laws, 1975, ch. 458, § 8, eff from and after passage (approved April 3, 1975).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-131.

FLOODING DISASTER OF 1979

SEC.
27-107-151. Expired.

27-107-153. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.
27-107-155. Administrator of certain emergency appropriations.
27-107-157. Local emergency grant and loan fund; loans to counties and municipalities; conditions as to loans and their repayment.
27-107-159. Time limitation on loan applications.
27-107-161. Counties and municipalities to maintain certain records.
27-107-163. Total expenditure of appropriated state funds.
27-107-165. State bond commission's authority to borrow.
27-107-167. Adoption of rules and regulations.
27-107-169. Allocations to agencies with depleted funds; utilization of appropriated funds to assist such agencies.
27-107-171. Allocations to agencies with depleted funds; Administrator of certain emergency appropriations.
27-107-173. Allocations to agencies with depleted funds; state disaster emergency fund; payments from fund.
27-107-175. Allocations to agencies with depleted funds; certified copies of minutes of agencies governing boards and application forms.
27-107-177. Allocations to agencies with depleted funds; use of funds.
27-107-179. Allocations to agencies with depleted funds; documentation of requests; auditing.
27-107-181. Allocations to agencies with depleted funds; certification of whether expenditures made and losses incurred are reimbursable; payments to state treasury.
27-107-183. Allocations to agencies with depleted funds; time limitation on applications.
27-107-185. Allocations to agencies with depleted funds; total expenditure of state funds.
27-107-187. Allocations to agencies with depleted funds; state bond commission's authority to borrow.
27-107-189. Allocations to agencies with depleted funds; adoption of rules and regulations.

§ 27-107-151. Expired.

Expired pursuant to its own terms, effective September 30, 1979.
[Laws, 1979, ch. 430, § 1.]

Editor's Note — Former § 27-107-151 authorized the expenditure of public funds and utilization of public equipment and facilities.

§ 27-107-153. Utilization of appropriated funds to assist local governing authorities to obtain federal funds for restoration purposes.

For purposes of Sections 27-107-151 through 27-107-189, the term "commission of budget and accounting" or "commission" shall mean the state fiscal management board.

The Commission of Budget and Accounting, referred to as "commission," is hereby expressly authorized and empowered to utilize any funds appropriated for such purposes to make grants or loans to boards of supervisors, boards of trustees of public schools and junior colleges, and the mayor and board of aldermen or other governing body of incorporated municipalities for the purpose of assisting such county and municipal government authorities in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, ports and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of the unprecedented devastation wrought by the excessive rains, excessive winds and floods and ice damages subsequent to January 1, 1979.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 1; Laws, 1984, ch. 488, § 186, eff from and after July 1, 1984.

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

§ 27-107-155. Administrator of certain emergency appropriations.

The Commission of Budget and Accounting, being the disaster emergency funding board established in Section 43-41-5 [repealed], is hereby made the sole administrator of any appropriation enacted during the first extraordinary session of 1979 to implement the provisions of Sections 27-107-153 through 27-107-167. It is authorized to utilize any of its general powers provided by Chapter 496, Laws of 1962, as amended, appearing as Sections 27-103-1 through 27-103-75, Mississippi Code of 1972, in making findings of fact and determinations as to the extent and degree of the damages, destruction or loss to the public properties and the dollar value thereof described in the preceding section. It shall take into consideration the appropriate economic factors, present and potential losses in city, county and state taxes, and revenues of all types, existing and subsequent federal laws, funds and programs, and other relevant facts and fiscal data in determining the amount of state grants and loans and reasonable conditions of the grants and loans made to the governing authorities of eligible counties and municipalities and the boards of trustees of public schools and junior colleges which have suffered publicly owned property loss and economic losses as a direct result of the excessive rains and floods of the spring of 1979.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 2, eff from and after passage (approved May 3, 1979).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Section 43-41-5 referred to in this section was repealed by Laws of 1984, ch. 488, § 335, effective from and after July 1, 1984.

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-157. Local emergency grant and loan fund; loans to counties and municipalities; conditions as to loans and their repayment.

(1) There is hereby established within the state treasury a special fund to be designated as the "local disaster emergency grant and loan fund." All sums received or obtained by the commission under the provisions of Sections 27-107-153 through 27-107-167, by appropriation or otherwise, shall be deposited into the fund. All sums approved to be granted or loaned shall be paid upon warrants drawn on the local disaster emergency grant and loan fund, and the state auditor of public accounts shall issue warrants upon requisitions signed by the director and secretary of the commission of budget and accounting.

(2) In making grants or loans, the commission is authorized to utilize any of its general powers provided by Chapter 496, Laws of 1962, as amended, appearing as Sections 27-103-1 through 27-103-75, Mississippi Code of 1972.

(3) Any loans made to a county or municipality under the provisions of this section are hereby made full faith and credit obligations of such counties and municipalities to the State of Mississippi and binding on the governing bodies obtaining such loans and their successors in office until repaid in full as to principal and interest thereon without regard to existing statutory limitations.

(4) The commission shall require a certified copy of a resolution, order or other appropriate excerpts of the official minutes of the governing board or authorities, to be of such general form and content as the commission may deem appropriate, together with application forms for such state loans.

(5) All loans made under the provisions of this section shall be evidenced by negotiable promissory notes of the county or municipality to be in such standard form and content of acceptable banking standards, shall mature at such times and bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer and clerk of the board of supervisors and the official seal, or the mayor or presiding officer and city clerk and the official seal.

(6) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third year	Three percent (3%) per annum
Fourth year	Four percent (4%) per annum
Fifth year	Five percent (5%) per annum
Sixth year and thereafter	Six percent (6%) per annum

(7) The governing authorities borrowing money under Sections 27-107-153 through 27-107-167 are hereby authorized and empowered to levy not to exceed two (2) mills on all of the taxable property of the county or municipality at any time after the loan is made, and said levy is hereby designated to repay the loan and it shall not be charged against the existing general laws as to limitations of millage for local governmental purposes.

(8) In the event that such loan has not been repaid or arrangements satisfactory to the commission have not been made to repay same within five (5) years from the making of such loan, the commission shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the chancery clerk or city clerk, as the case may be. If said default is not satisfied in full on or before the first day of March next following, a local ad valorem tax of two (2) mills or so much thereof as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as determined by the commission shall be levied by the county or municipality on all the taxable property in said county or city to be collected in the same manner, time and form as the existing local ad valorem tax levies, and shall be paid into the state treasury. Failure or refusal of any county or municipality to levy the tax hereinabove referred to or to otherwise discharge its obligation to the state shall forfeit the right of said county or municipality to receive reimbursement for homestead exemption until such time as its indebtedness has been discharged or arrangements to discharge said indebtedness satisfactorily to the commission have been made. Homestead exemption funds forfeited hereby shall, upon demand by the commission made in writing upon the Mississippi State Tax Commission, be paid to the commission and applied to the discharge of the obligation.

(9) The proceeds of all loans shall be used only for public governmental functions, services, payment of emergency indebtedness incurred as a direct result of the excessive rains and floods of the Spring of 1979, and expenditures authorized by general law and for matching federal grants, private gifts and donations, such federal grants, private gifts and donations being hereby authorized to be received and disbursed as public funds.

(10) The Commission of Budget and Accounting in determining the total amount of loan to each qualifying political subdivision shall take into consideration the extent and degree of the damage, destruction or loss to public properties and the dollar value thereof, the reasonable expectation of loss of present and future revenues, the destruction and damages to tax-producing real and personal property, and all appropriate economic factors affecting the ability of said political subdivision to provide necessary public functions.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 3, eff from and after passage (approved May 3, 1979).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of (10). The word "extend" was changed to "extent." The Joint Committee ratified the correction at its June 3, 2003 meeting.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-159. Time limitation on loan applications.

No application for grants or loans under the authority of Sections 27-107-153 through 27-107-167 shall be filed after January 20, 1980, and no application for a grant or loan shall be approved after March 31, 1980.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 4, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "commission of budget and accounting" and "commission," see § 27-107-153.

§ 27-107-161. Counties and municipalities to maintain certain records.

The Commission of Budget and Accounting shall require boards of supervisors and the governing authorities of municipalities to maintain such minute books and other records as said commission deems reasonable and necessary for carrying out the purposes of Sections 27-107-153 through 27-107-167, including auditing by the state auditor of all expenditures of grants and loans made pursuant to the provisions of Sections 27-107-153 through 27-107-167 and also of federal grants, private gifts and donations authorized to be received hereunder.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 5, eff from and after passage (approved May 3, 1979).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-163. Total expenditure of appropriated state funds.

The total authorized expenditure of state funds under the provisions of Sections 27-107-153 through 27-107-167 from either an appropriation by the legislature or from funds borrowed by the commission under the provisions of Section 27-107-165 shall not exceed an aggregate amount of five million dollars ($5,000,000.00).

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 6, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-165. State bond commission's authority to borrow.

In the event an appropriation is not made for the purposes of Sections 27-107-153 through 27-107-167 or any appropriation for such purposes shall be less than the aggregate amount of expenditures authorized under Section 27-107-163, the commission of budget and accounting shall have the authority to request the state bond commission to borrow the difference in the amount appropriated, if any, and the authorized aggregate amount of expenditures. Such borrowing shall be in the same manner and under the same terms and conditions as provided under Chapter 557, Laws of 1966, as amended by Chapter 466, Laws of 1979, except any notes issued hereunder shall mature not later than May 1, 1980, and there shall be irrevocably pledged the full faith, credit and resources of the State of Mississippi for the payment of both the principal and interest on such notes.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 7, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

State bond commission, generally, see § 31-17-1 et seq.

§ 27-107-167. Adoption of rules and regulations.

The commission shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-153 through 27-107-167.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 3, § 8, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-169. Allocations to agencies with depleted funds; utilization of appropriated funds to assist such agencies.

The Commission of Budget and Accounting, referred to as "commission," is hereby expressly authorized and empowered to utilize any funds appropriated or otherwise made available for such purposes to make allocations to state agencies to defray the expenses incurred by them in carrying out their assigned disaster or emergency assignments which have depleted their regular appropriation below a level which would prohibit them from carrying out their normally assigned duties, and to repair or replace any property or equipment damaged, destroyed or lost as a direct result of the unprecedented devastation wrought by the excessive rains and floods in the spring of 1979 to the State of Mississippi and to pay the cost of federal flood insurance premiums on state-owned property damaged or destroyed as a result of said flood.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 1, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-171. Allocations to agencies with depleted funds; Administrator of certain emergency appropriations.

The Commission of Budget and Accounting, being the disaster emergency funding board established in Section 43-41-5, is hereby made the sole administrator of any appropriation enacted during the first extraordinary session of 1979 to implement the provisions of Sections 27-107-169 through 27-107-189. It is authorized to utilize any of its general powers provided by Chapter 496, Laws of 1962, as amended, appearing as Sections 27-103-1 through 27-103-75, Mississippi Code of 1972, in making findings of fact and determinations as to the extent and degree of damages, destruction or loss to the public properties, and the dollar value thereof, the reasonable expectation of loss of present and future revenues, and all appropriate economic factors affecting the ability of state agencies to provide necessary public functions. It shall take into consideration programs and other relevant facts and fiscal data in determining the amount of allocations to state agencies which have suffered publicly owned property loss as a direct result of the excessive rains and floods in the spring of 1979.

Notwithstanding the provisions of any appropriation act which restricts the increase in any one (1) object of expenditure in excess of fifteen percent (15%), the commission of budget and accounting is hereby authorized to approve increases in any amounts when such funds are necessary to make expenditures authorized by Sections 27-107-169 through 27-107-189, provided that other objects are reduced in an amount to compensate for such increases.

No allocation authorized under the provisions of Sections 27-107-169 through 27-107-189 shall be made to any agency which has other funds in its budget which could be utilized for these purposes except for the fifteen percent (15%) category transfer limitation provided in their appropriation bill.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 2, eff from and after passage (approved May 3, 1979).

Editor's Note — Sections 27-103-1 through 27-103-75 referred to in this section have been repealed.

Section 43-41-5 referred to in this section was repealed by Laws of 1984, ch. 488, § 335, effective from and after July 1, 1984.

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-173. Allocations to agencies with depleted funds; state disaster emergency fund; payments from fund.

There is hereby established within the State Treasury a special fund to be designated as the "state disaster emergency fund." All sums received or obtained by the commission under the provisions of Sections 27-107-169 through 27-107-189, by appropriation or otherwise, shall be deposited into the fund. All sums approved to be allocated shall be paid upon warrants drawn on the state disaster emergency fund, and the state auditor of public accounts shall issue warrants upon requisitions signed by the director and secretary of the commission of budget and accounting.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 3, eff from and after passage (approved May 3, 1979).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "commission of budget and accounting" and "commission," see § 27-107-153.

§ 27-107-175. Allocations to agencies with depleted funds; certified copies of minutes of agencies governing boards and application forms.

The Commission of Budget and Accounting shall require a certified copy of a resolution, order, or other appropriate excerpt of the official minutes of the state agency governing board, to be of such general form and content as the commission may deem appropriate, together with application forms for such allocations.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 4, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-177. Allocations to agencies with depleted funds; use of funds.

The proceeds of all allocations shall be used only for reimbursement of the agencies' expenses for emergency or disaster-related duties and for the repair or replacement of publicly owned property or equipment damaged or lost as a direct result of the excessive rains and floods of the spring of 1979.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 5, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-179. Allocations to agencies with depleted funds; documentation of requests; auditing.

The Commission of Budget and Accounting shall require the governing boards of such state agencies to document all requests for allocations and may include auditing by the state auditor of all expenditures and claims included in the applications.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 6, eff from and after passage (approved May 3, 1979).

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "commission of budget and accounting" and "commission," see § 27-107-153.

§ 27-107-181. Allocations to agencies with depleted funds; certification of whether expenditures made and losses incurred are reimbursable; payments to state treasury.

The Commission of Budget and Accounting shall require each agency making application for allocations to certify whether expenditures made and losses incurred as a direct result of the disaster are reimbursable under federal grants, private gifts, donations or otherwise.

In the event allocations are made under the provisions of Sections 27-107-169 through 27-107-189, the commission of budget and accounting shall require that any reimbursements for expenditures made with the allocated funds shall be paid into the state treasury to the credit of the state general fund.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 7, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-183. Allocations to agencies with depleted funds; time limitation on applications.

No application for allocations under authority of Sections 27-107-169 through 27-107-189 shall be filed after January 20, 1980, and no application for allocations shall be approved after March 31, 1980.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 8, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-185. Allocations to agencies with depleted funds; total expenditure of state funds.

The total authorized expenditure of state funds under the provisions of Sections 27-107-169 through 27-107-189 from either an appropriation by the legislature or from funds borrowed under the provisions of Section 27-107-187 shall not exceed an aggregate amount of three million dollars ($3,000,000.00).

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 9, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

§ 27-107-187. Allocations to agencies with depleted funds; state bond commission's authority to borrow.

In the event an appropriation is not made for the purposes of Sections 27-107-169 through 27-107-189 or any appropriation for such purposes shall be less than the aggregate amount of expenditures authorized under Section 27-107-185, the commission of budget and accounting shall have the authority to request the state bond commission to borrow the difference in the amount appropriated, if any, and the authorized aggregate amount of expenditures. Such borrowing shall be in the same manner and under the same terms and conditions as provided under Chapter 557, Laws of 1966, as amended by Chapter 466, Laws of 1979, except any notes issued hereunder shall mature not later than May 1, 1980, and there shall be irrevocably pledged the full faith, credit and resources of the State of Mississippi for the payment of both the principal and interest on such notes.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 10, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

State bond commission, generally, see § 31-17-1 et seq.

§ 27-107-189. Allocations to agencies with depleted funds; adoption of rules and regulations.

The Commission of Budget and Accounting shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-169 through 27-107-189.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 4, § 11, eff from and after passage (approved May 3, 1979).

Cross References — Definition of "Commission of Budget and Accounting" and "commission," see § 27-107-153.

JONES COUNTY TORNADO DISASTER OF FEBRUARY, 1987

SEC.
27-107-201. Authorization to transfer certain funds to loan to county, municipalities, and school districts to match federal funds for restoration purposes.
27-107-203. Authorization to utilize certain funds to loan to county, municipalities, and school districts to obtain federal funds for restoration purposes.
27-107-205. Administrator of certain emergency funds; loans to county, municipalities and school districts.
27-107-207. Rules and regulations.

§ 27-107-201. Authorization to transfer certain funds to loan to county, municipalities, and school districts to match federal funds for restoration purposes.

The State Fiscal Management Board is authorized to transfer any unobligated funds in the Mississippi Emergency Management Agency Fund No. 3723 to the Local Disaster Emergency Grant and Loan Fund No. 3793 in order to loan funds to Jones County, Mississippi, and/or to municipalities and school districts therein to match federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, airports and other governmental facilities, all of such being publicly owned and governed by the governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of the Jones County tornado disaster of February 28, 1987.

SOURCES: Laws, 1988, ch. 497, § 1, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

§ 27-107-203. Authorization to utilize certain funds to loan to county, municipalities, and school districts to obtain federal funds for restoration purposes.

The State Fiscal Management Board is hereby authorized to utilize any available funds representing the repayment of disaster loans and interest thereon to the credit of the Local Disaster Emergency Grant and Loan Fund No. 3793 in the State Treasury, including any monies transferred to such fund from the Mississippi Emergency Management Agency Fund under Section 27-107-201, to make loans to the governing authorities of Jones County, Mississippi, any municipality within Jones County and/or any school district within Jones County for the purpose of assisting such county, municipality and/or school district in obtaining federal funds to be used in making repairs, renovations, restoration, construction, reconstruction and related improvements, and restoring or purchasing machinery, equipment and supplies to public office buildings, schools, courthouses, hospitals, water supplies, sewer and utility systems, streets, roads, bridges, ports and airports and other governmental facilities, all of such being publicly owned and governed by said governing authorities having statutory power thereover, which real, personal or mixed properties were either damaged, destroyed or lost as a direct result of the Jones County tornado disaster of February 28, 1987.

SOURCES: Laws, 1988, ch. 497, § 2, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

§ 27-107-205. Administrator of certain emergency funds; loans to county, municipalities and school districts.

(1) The State Fiscal Management Board is hereby made the sole administrator of the funds made available to implement the loan program under Sections 27-107-201 through 27-107-207. It is authorized to utilize any of its general powers in making findings of fact and determinations as to the amount of funds needed by the county, municipality or school district in order to receive federal disaster funds for the purposes of Section 27-107-201. The State Fiscal Management Board shall determine the amount of loans to be made within available funds; however, the aggregate amount of such loans shall not exceed Eight Hundred Thousand Dollars ($800,000.00). All sums approved to be loaned shall be paid upon warrants drawn on the Local Disaster Emergency

Grant and Loan Fund No. 3793, issued upon requisitions signed by the State Fiscal Officer.

(2) Any loans made hereunder to a county, municipality and/or school district described in Section 27-107-203 are hereby made full faith and credit obligations of such political subdivisions to the State of Mississippi and binding on the governing authorities obtaining such loans and their successors in office until repaid in full as to principal and interest thereon, without regard to existing statutory limitations.

(3) The State Fiscal Management Board shall require a certified copy of a resolution of the governing authorities desiring a loan, to be of such general form and content as the State Fiscal Management Board may deem appropriate, together with application forms for such loans.

(4) All loans made under this section shall be evidenced by negotiable promissory notes of the county, municipality and/or school district to be in such standard form and content of acceptable banking standards, shall mature at such times and bear interest as hereinafter provided, and shall bear the signature of the president or presiding officer of the governing authorities.

(5) The loans made hereunder shall bear no interest for the first two (2) years from the date of the loan. However, the loans shall bear the following interest rates thereafter:

Third year	Six percent (6%) per annum
Fourth year	Seven percent (7%) per annum
Fifth year	Eight percent (8%) per annum
Sixth year and thereafter	Nine percent (9%) per annum

(6) The governing authorities of the county or municipality therein borrowing money under Sections 27-107-201 through 27-107-207 are hereby authorized and empowered to levy an ad valorem tax on all of the taxable property of the county or municipality, as the case may be, at any time after the loan is made, and said levy is hereby designated to repay only the loan and any interest thereon. If the governing authorities of a school district borrow money under this section the governing authorities of the county or municipality that levies taxes on behalf of the school district shall levy an ad valorem tax on all taxable property of the school district at any time after the loan is made, and said levy is hereby designated to repay the loan and any interest thereon. The levy shall not be included in any limitation on the growth of ad valorem tax receipts.

(7) If the loan has not been repaid or arrangements satisfactory to the State Fiscal Management Board have not been made to repay same within five (5) years from the making of such loan, the State Fiscal Management Board shall determine that there is a default in the terms of the promissory note, including any interest due thereon, shall enter an order to that effect upon its official minutes and send a certified copy of said order by certified mail, postage prepaid, to the president or presiding officer of the governing authorities. If said default is not satisfied in full within sixty (60) days after receipt of said order, an ad valorem tax as may be required to liquidate the entire indebtedness owed the state within a reasonable number of years as determined by the

State Fiscal Management Board shall be levied by the county or municipality as provided in subsection (6) of this section, and shall be paid into the State Treasury to the credit of the Local Disaster Emergency Grant and Loan Fund. Failure or refusal to discharge the obligation to the state shall forfeit the right of the county, municipality or school district, as the case may be, to receive reimbursement for homestead exemption until such time as its indebtedness has been discharged or arrangements to discharge said indebtedness satisfactorily to the State Fiscal Management Board have been made. Homestead exemption funds forfeited hereby shall, upon demand by the State Fiscal Management Board made in writing upon the Mississippi State Tax Commission, be paid to the State Fiscal Management Board and applied to the discharge of the obligation.

(8) The proceeds of all loans shall be used only for the purposes described in Section 27-107-203.

SOURCES: Laws, 1988, ch. 497, § 3, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-107-207. Rules and regulations.

The State Fiscal Management Board shall have authority to adopt reasonable rules and regulations for the purposes of Sections 27-107-201 through 27-107-207.

SOURCES: Laws, 1988, ch. 497, § 4, eff from and after passage (approved May 6, 1988).

Editor's Note — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

INTERSTATE EARTHQUAKE EMERGENCY COMPACT

SEC.
27-107-301. Interstate earthquake emergency compact.

§ 27-107-301. Interstate earthquake emergency compact.

The Legislature of the State of Mississippi hereby ratifies a compact on behalf of the State of Mississippi with any other state legally joining therein in the form substantially as follows:

The contracting states solemnly agree:

Article 1. The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster caused by earthquakes or other seismic disturbances. The full, immediate and effective utilization of the resources of the respective states, including such resources as may be available from the United States government or any other source, is necessary to provide needed short-term earthquake disaster assistance to states requesting aid. These resources shall be incorporated into a plan or plans of mutual aid to be developed among the appropriate agencies of states that are parties to this compact. These agencies shall develop and follow procedures designed to assure the maintenance of resource inventories and the exchange of information about earthquakes and disaster response. It is the policy of the party states to carry out this compact in a spirit of cooperation to provide the most effective earthquake disaster assistance to the residents of the states and to provide an equitable division of any necessary earthquake relief efforts in order to avoid a disproportionate allocation of contributed resources.

Article 2. Each party state shall have the duty to formulate earthquake relief plans and programs within such state. There shall be frequent consultation between the representatives of such states and with the United States government and the free exchange of relief plans and information, including inventories of any materials and equipment available for response to earthquake emergencies. To this end, each state will maintain a bank of standardized data which will establish a comprehensive listing of all resources within the compact region that might be needed during an earthquake disaster. The inventory will be shared equitably among the party states in the event of an earthquake, recognizing each state's primary responsibility to assist and protect its residents. Each party state shall also share any available information on earthquake forecasts and reports of seismic activity.

Article 3. Whenever the Governor of a party state requests aid from the Governor of another party state pursuant to this compact in coping with an earthquake emergency, the requested state shall make available all possible aid to the requesting state consonant with the maintenance of protection of its residents and the policies stated in Article 1.

Article 4. Whenever the officers or employees of any party state are rendering aid in another state pursuant to the request of another party state under this compact, those officers or employees shall, while under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid. Any person holding a license, certificate or other permit issued by any state demonstrating the meeting of qualifications for professional, mechanical or other skills may render aid involving such skill in any party state to meet an earthquake emergency, and the state in which aid is rendered shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

Article 5. No party or its officers, employees or other persons, certified by party states pursuant to agreed upon criteria and procedures for certification, rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on their part while so engaged, or on account of maintenance or use of any equipment or supplies in connection therewith.

Article 6. Nothing in this agreement precludes any state from entering into supplementary agreements with another state or states for the undertaking of mutual aid and exchange of information in the event of an earthquake emergency. These supplementary agreements may comprehend but are not limited to provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

Article 7. Each party state shall provide compensation and death benefits to its insured officers, employees or other persons certified by party states, pursuant to agreed upon criteria and procedures for certification, and the representatives of deceased officers, employees and other certified persons sustaining injuries or death while rendering aid in another state pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer, employee or certified person was regularly employed.

Article 8. Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of, and equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such request, including amounts paid under Article 7, provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost. Any two (2) or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may relieve the party state receiving aid from any liability and reimburse the party state rendering aid for loss, damage or expense incurred within the terms of this article.

Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an earthquake emergency shall be worked out from time to time between representatives of the party states. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials and supplies, and all other relevant factors. The plans must provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures and transportation, food, clothing, medicines and medical care and like items. These expenditures shall be reimbursed by the party state of which the evacuees are residents or by the United States government under plans approved by it. The party state of which the evacuees are residents shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article 10. Any state of the United States shall be eligible to become party to this compact. As to any eligible party state, this compact shall become effective when such state shall have enacted it into law; provided that it shall not become initially effective until enacted into law by two (2) party states.

Article 11. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until ninety (90) days after the Governor of the withdrawing state shall have set formal notice in writing to the Governor of each other party state informing such Governors of the action of the Legislature in repealing the compact and declaring an intention to withdraw. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of such obligation.

Article 12. This compact is to be construed to effectuate the purposes stated in Article 1. If any provision of this compact is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances is not to be affected by it.

SOURCES: Laws, 1989, ch. 425, § 1, eff from and after passage (approved March 20, 1989).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in Article 8. The word "from" was substituted for the word "for" so that "nothing herein contained shall prevent any assisting party state for assuming such loss" reads "nothing herein contained shall prevent any assisting party state from assuming such loss." The Joint Committee ratified this correction at its August 5, 2008, meeting.

Comparable Laws from other States — Missouri Revised Statutes, § 256.155.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Proof of Facts 3d,
Act of God, § 1 et seq.

EMERGENCY AID TO LOCAL GOVERNMENTS

SEC.

27-107-321. Emergency aid to local governments loan and grant program established; amount of loan or grant authorized under program; loan repayment; powers and duties of Department of Finance and Administration in administering program.

§ 27-107-321. Emergency aid to local governments loan and grant program established; amount of loan or grant authorized under program; loan repayment; powers and duties of Department of Finance and Administration in administering program.

(1)(a) There is established an emergency aid to local governments loan and grant program to be administered by the Department of Finance and Administration, referred to in this section as "department," for the purpose of assisting counties, incorporated municipalities and public school districts that suffer revenue losses as a result of a natural disaster for which a state of emergency has been duly proclaimed. Loan and grant proceeds distributed to counties, incorporated municipalities and public school districts shall be considered to be, and shall be utilized by recipient in the same manner as, governmental, enterprise or internal service fund type revenues, specifically for essential government services, including the payment of debt service.

(b) The department may contract for facilities and staff needed to administer this section, including routine management, as it deems necessary. The department may advertise for or solicit proposals from public or private sources, or both, for administration of this section or any services required for administration of this section or any portion thereof. It is the intent of the Legislature that the department endeavor to ensure that the costs of administration of this section are as low as possible.

(2)(a) There is created a special fund in the State Treasury to be designated as the "Emergency Aid to Local Governments Fund," referred to in this section as "fund," which fund shall consist of money transferred from the Disaster Recovery Fund created in Section 31-17-123 and money designated for deposit therein from any other source, public or private, including, but not limited to, appropriations, bond proceeds, grants, gifts or donations. The fund shall be credited with all repayments of principal and interest derived from loans made from the fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the Emergency Aid to Local Governments Fund. Monies in the fund may not be used or expended for any purpose except as authorized under this section.

(b) The department shall establish a loan and grant program by which loans and grants may be made available to counties, incorporated municipalities and public school districts, to assist those counties, incorporated municipalities and public school districts. Any governmental entity in the current fiscal year that demonstrates a projected revenue loss equal to or exceeding twenty-five percent (25%) of its governmental fund type revenues in the fiscal year prior to the occurrence of the natural disaster eligible under this section may qualify for a loan and/or grant. The interest rate on loans made under this section may vary from time to time and from loan to loan, and shall be at or below market interest rates as determined by the department. The department shall act as quickly as is practicable and prudent in deciding on any loan or grant request that it receives. No loan or grant shall be approved under this section unless the county, municipality or public school district requesting the loan or grant has exhausted all other available public or private programs to obtain funds for the revenue loss that it is projected to suffer. Such public or private programs shall include, but not be limited to, loans, grants and donations.

(c) The aggregate amount of any loans or grants received under this section by a county, incorporated municipality or public school district shall not exceed one hundred percent (100%) of the difference between the revenue received by a county, incorporated municipality or public school district from governmental fund type revenues that are used to fund essential services in the fiscal year prior to the occurrence of the natural disaster and the estimated revenue from such sources after the occurrence of the natural disaster plus available cash reserves or fund balances at the fiscal year end, as determined by the department. The State Bond Commission shall set the maximum amount of any loan or grant made under this section at an amount that will ensure the equitable distribution of the amounts available for loans and grants to the eligible governmental entities affected by the natural disaster, but in no event shall a grant exceed Three Million Dollars ($3,000,000.00) or the total aggregate amount of all grants exceed Twenty-five Million Dollars ($25,000,000.00).

(d) A county or public school district that receives a loan from the fund shall pledge for repayment of the loan any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, as may be required by the department. An incorporated municipality that receives a loan from the fund or the emergency fund shall pledge for repayment of the loan any part of the sales tax revenue distribution to which it may be entitled under Section 27-65-75 or any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, as may be required by the department. All recipients of such loans shall establish a dedicated source of revenue for repayment of the loan. Before any county, incorporated municipality or public school district shall receive any loan, it shall have executed with the department a loan agreement evidencing that loan, a copy of which shall be filed by the department with the State Tax Commission. The loan agreement shall not be construed to prohibit any recipient from prepaying any part or all of the funds received. The repayment schedule in each loan agreement shall provide for (i) monthly payments, (ii) semiannual payments or (iii) other periodic payments. The loan agreement shall provide for the repayment of all funds received from the fund within not more than three (3) years. The State Tax Commission shall, at the direction of the department, withhold semiannually from counties, incorporated municipalities and public school districts and monthly from incorporated municipalities, from the amount to be remitted to the county, municipality or public school district, the sum necessary to pay all or a portion of the periodic payments for the loan.

(e) Any county, incorporated municipality or public school district which receives a loan from the state for that purpose but which is not eligible to pledge for repayment under the provisions of paragraph (d) of this subsection, shall repay that loan by making payments each month to the State Treasurer through the Department of Finance and Administration for and on behalf of the department according to Section 7-7-15, to be credited to the fund in lieu of pledging homestead exemption annual tax loss reimbursement or sales tax revenue distribution.

Loan repayments shall be according to a repayment schedule contained in each loan agreement as provided in paragraph (d) of this subsection.

(f) Evidences of indebtedness which are issued pursuant to this section shall not be deemed indebtedness within the meaning specified in Section 21-33-303 with regard to cities and incorporated towns, in Section 19-9-5 with regard to counties and in Section 37-59-5 with regard to public school districts.

(g) The State Auditor, upon request of the department, shall audit the receipts and expenditures of a county, an incorporated municipality or a public school district if loan repayments appear to be in arrears, and if the Auditor finds that the county, incorporated municipality or public school district is in arrears in those repayments, the Auditor shall immediately notify the executive director of the department who may take any action as may be necessary to enforce the terms of the loan agreement, including liquidation and enforcement of the security given for repayment of the loan, and the executive director of the department may, in his discretion, notify the State Tax Commission to withhold all future payments to the county, incorporated municipality or school district of homestead exemption annual tax loss reimbursements under Section 27-33-77 and/or all sums allocated to the incorporated municipality under Section 27-65-75, until such time as the county, incorporated municipality or public school district is again current in its loan repayments as certified by the department.

(h) All monies deposited in the fund shall be used only for providing the loans and grants authorized under this section. In addition, any amounts in the fund may be used to defray the reasonable costs of administering the fund; however, no monies in the fund which are to be used for grant purposes may be used to defray any costs of administering the fund or program. The department is authorized to use amounts available to it from the fund to contract for those facilities and staff needed to administer and provide routine management for the funds and loan program.

(3) In administering this section the department shall have the following powers and duties:

(a) To supervise the use of all funds made available under this section;

(b) To promulgate rules and regulations, to make variances and exceptions thereto, and to establish procedures in accordance with this section for the implementation of the loan and grant program;

(c) To requisition monies in the fund and distribute those monies in accordance with this section;

(d) To maintain, in accordance with generally accepted government accounting standards, an accurate record of all monies in the fund made available to counties, incorporated municipalities and public school districts under this section;

(e) To file annually with the Legislature a report detailing how monies in the fund were distributed during the preceding fiscal year to each county, incorporated municipality and public school district.

(4) The State Bond Commission, at one time, or from time to time, may declare the necessity for funds for the purposes provided in this section, including the costs incident to the administration of the loan and grant program. Upon approval by the State Bond Commission, the department is authorized to transfer any necessary amount from the Disaster Recovery Fund created in Section 31-17-123 to the fund in ample time to discharge such loans, grants and incidental costs.

(5) The department is authorized, without further process of law, to certify the necessity for warrants and is authorized and directed to issue such warrants, in such amounts as may be necessary to make loans and grants under the program authorized by this section.

(6) After any state funds in the fund are no longer needed for the particular purpose for which they were appropriated, deposited or transferred into the fund, the department shall transfer those state funds back to the particular fund or funds in the State Treasury from which they were appropriated or transferred into the fund, upon certification of the State Fiscal Officer that the state funds are not currently needed.

(7) At least five (5) days before any public ceremony to announce the award of a grant to a county, municipality or public school district under this section, the department shall notify all of the members of the Mississippi House of Representatives and Mississippi Senate whose districts include any portion of the county, municipality or school district to which the grant is being made.

(8) The department shall include the following language at a prominent location on any documents prepared by the department in connection with a grant made under this section that are to be provided to the county, municipality or school district to which the grant is made or to the public: “The funds for this grant were made available by the Mississippi Legislature.”

SOURCES: Laws, 2005, 5th Ex Sess, ch. 12, § 3; Laws, 2006, 1st Ex Sess, ch. 7, § 1, eff from and after passage (approved Sept. 13, 2006.)

Editor’s Note — Laws of 2006, 1st Ex Sess, ch. 8, § 18, effective September 13, 2006, provides:

“SECTION 18. Section 3, Chapter 534, Laws of 2006, is amended as follows:

“Section 3. There is hereby created in the State Treasury a special fund, separate and apart from any other special fund, to be designated as the Hurricane Disaster Reserve Fund. The State Fiscal Officer shall transfer from the State General Fund into the Hurricane Disaster Reserve Fund an amount equal to Two Hundred Sixty-eight Million Dollars ($268,000,000.00) during the period beginning July 1, 2006, and ending June 30, 2007.

"The funds transferred herein to the Hurricane Disaster Reserve Fund shall be utilized to defray the state's share of any nonfederal matching requirements for Federal Emergency Management Agency grants associated with Hurricane Katrina and other disasters. Unexpended funds remaining in the Hurricane Disaster Reserve Fund at the end of the fiscal year shall not lapse into the State General Fund but shall remain in the fund and any interest earned or investment earnings on amounts in the Hurricane Disaster Reserve Fund shall remain in the fund; however, any interest earned or investment earnings on amounts in the fund during fiscal years 2007 and 2008 shall be transferred by the State Treasurer to the Emergency Aid to Local Governments Fund created in Section 27-107-321.

"Funds deposited into the Hurricane Disaster Reserve Fund shall be used only for the purposes specified in this section, and as long as the provisions of this section remain in effect, no other expenditure, appropriation or transfer of funds in the Hurricane Disaster Reserve Fund shall be made except by act of the Legislature making specific reference to the Hurricane Disaster Reserve Fund as the source of those funds."

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — State bond commission generally, see § 31-17-1 et seq.

CHAPTER 109

Cruise Vessels

SEC.

27-109-1. Administration of chapter; operating license; powers and duties of commission; audits; records.

27-109-3. Commission to promulgate regulations.

27-109-5. Qualifications for license.

27-109-7. Consideration of applications; privilege license; certificate of suitability for each vessel; bonding requirements.

27-109-9. Issuance of license; requirements applicable to existing cruise vessel operations.

27-109-11. Fees; distribution of fees.

27-109-13. Penalties.

27-109-15. State Tax Commission certification that it is exercising duties granted under Mississippi Gaming Control Act; licenses.

§ 27-109-1. Administration of chapter; operating license; powers and duties of commission; audits; records.

(1) The provisions of this chapter shall be administered by the State Tax Commission, which shall administer them for the protection of the public and in the public interest in accordance with the policy of this state.

(2)(a) The operator of any cruise vessel or vessel operating within the territorial jurisdiction of the State of Mississippi shall be required to apply for and obtain a privilege license from the State Tax Commission.

(b) For purposes of this chapter, the operator of any cruise vessel or vessel shall be identified as any owner or lessee which is vested with the authority and responsibility to manage daily operations of any such cruise vessel or vessel.

(c)(i) For purposes of this chapter, the term "cruise vessel" shall mean a vessel which complies with all U.S. Coast Guard regulations, having a minimum overall length of one hundred fifty (150) feet and a minimum draft of six (6) feet and which is certified to carry at least two hundred (200) passengers; and the term "vessel" shall mean a vessel having a minimum overall length of one hundred fifty (150) feet. The term "vessel" shall also mean a "cruise vessel" as referred to in Section 27-109-11. For the purposes of a "vessel" as that term is defined in this section, "navigable waters" means any rivers, creeks, bayous or other bodies of water within any county in this state bordering on the Mississippi River that are used or susceptible of being used as an artery of commerce and which either in their natural or improved condition are used or suitable for use as an artery of commerce or are used for the docking or mooring of a vessel, notwithstanding interruptions between the navigable parts of such rivers, creeks, bayous or other bodies of water by falls, shallows, or rapids compelling land carriage. The term "cruise vessel" or "vessel" also includes a structure as described in Section 97-33-1(b).

(ii) For purposes of this subparagraph, the definitions of the words "person" and "gaming license" shall have the meanings ascribed to those words and terms in Section 75-76-5. After July 1, 2005, any person possessing a valid gaming license to conduct legal gaming on a cruise vessel or vessel may construct permanent structures upon which to place the vessel or cruise vessel where the licensee has received approval to offer legal gaming. Such permanent structures shall be included within the meanings of the terms "cruise vessel" and "vessel" under subparagraph (i). In the event that such a gaming licensee constructs permanent structures under this subparagraph, the requirement that a cruise vessel have a minimum draft of six (6) feet shall not apply. This subparagraph shall not authorize any form of inland gaming or the conducting of legal gaming on a vessel or cruise vessel which is not on, in or above water, as contemplated under subparagraph (i) and Section 97-33-1.

(3) The commission and its agents may:

(a) Inspect and examine all premises on the cruise vessel.

(b) Inspect all equipment and supplies in, upon or about such premises.

(c) Summarily seize and remove from such premises and impound any equipment or supplies for the purpose of examination and inspection.

(d) Demand access to and inspect, examine, photocopy and audit all papers, books and records of applicants and licensees, on their premises, or elsewhere as practicable, and in the presence of the licensee or his agent, respecting all matters affecting the enforcement of the policy or any of the provisions of this chapter.

(4) For the purpose of conducting audits after the cessation of operations by a licensee, the former licensee shall furnish, upon demand of an agent of the commission, books, papers and records as necessary to conduct the audits. The former licensee shall maintain all books, papers and records necessary for audits for a period of one (1) year after the date of the surrender or revocation of his privilege license. If the former licensee seeks judicial review of a deficiency determination or files a petition for a redetermination, he must maintain all books, papers and records until a final order is entered on the determination.

(5) The commission may investigate, for the purpose of prosecution, any suspected criminal violation of the provisions of this chapter. For the purpose of the administration and enforcement of this chapter, the commission and the executive, supervisory and investigative personnel of the commission have the powers of a peace officer of this state.

(6) The commission, or any of its members, has full power and authority to issue subpoenas and compel the attendance of witnesses at any place within this state, to administer oaths and to require testimony under oath. Any process or notice may be served in the manner provided for service of process and notices in civil actions. The commission may pay such transportation and other expense of witnesses as it may deem reasonable and proper. Any person making false oath in any matter before the commission is guilty of perjury. The commission, or any member thereof, may appoint hearing examiners who may administer oaths and receive evidence and testimony under oath.

SOURCES: Laws, 1989, ch. 480, § 1; Laws, 1990, ch. 449, § 1; Laws, 1990, ch. 573, § 2; Laws, 1990, 1st Ex Sess, ch. 45, § 143; Laws, 2005, ch. 488, § 1; Laws, 2005, 5th Ex Sess, ch. 11, § 1, eff from and after passage (approved October 6, 2005.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the cross reference note. The reference to "19-3-77" was changed to "19-3-79". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Cross References — Definition of navigable waters, see § 1-3-31.

Exemption of cruise vessels from gambling restrictions, see §§ 19-3-79, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-17, 97-33-25, and 97-33-27.

Additional requirements for obtaining gaming license, including notice of intent to apply for gaming license, resolution authorizing gaming, and referendum on allowing gaming, see § 19-3-79.

Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

State Tax Commission generally, see § 27-3-1 et seq.

Penalties for violating this section, see § 27-109-13.

Another definition of navigable waters, see § 51-1-1.

Local option regarding alcoholic beverages as inapplicable to cruise vessels, see § 67-1-71.

Gambling on vessel defined in this section not grounds for suspension or revocation of liquor license, see § 67-1-71.

Mississippi Gaming Control Act, see § 75-76-1 et seq.

Application of definitions of "navigable waters" and "vessel" or "cruise vessel", as defined herein, to Mississippi Gaming Control Act, see § 75-76-5.

Authorization for cruise vessels authorized to operate under this chapter to continue to operate until licensed under the Mississippi Gaming Control Act, see § 75-76-75.

Exemption of certain cruise vessels from ad valorem taxes, see § 75-76-279.

Loser prohibited from suing and recovering money lost on cruise vessel, see § 87-1-5.

Gambling aboard cruise vessel as not constituting nuisance, see § 95-3-25.

Anti-gambling and wagering provisions as not applicable to cruise vessels, see § 97-33-1.

Prohibition against possession of gambling devices inapplicable to vessels as defined in this section, see § 97-33-7.

Gambling wagers, etc. on cruise vessels as not subject to seizure, see § 97-33-17.

Exception from provision prohibiting pool-selling for cruise vessels, see § 97-33-25.

Horse race betting, yacht-race or shooting match prohibitions as not applicable to cruise vessels, see § 97-33-27.

JUDICIAL DECISIONS

1. In general.

The requirement of subsection (2) of this section that a cruise vessel must have a draft of six feet does not require a casino to be located at a place where waters in their natural, unimproved condition are capable of accommodating such a cruise vessel. Concerned Citizens to Protect the Isles & Point, Inc. v. State Gaming Comm'n, 735 So. 2d 368 (Miss. 1999).

Shore-based casino could not be considered "vessel" for purposes of the Jones Act and general maritime law based on fact that it represented itself as being a "vessel" for purpose of obtaining a license to conduct gambling operations in the State of Mississippi. King v. Grand Casinos, Inc., 697 So. 2d 439 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

Because bodies of water identified in the definition of navigable waters are all natural watercourses, neither landlocked, currentless bodies of water nor artificially created lakes, ponds, borrow pits or other bodies of water are included in the definition of navigable waters. Williams, May 18, 1992, A.G. Op. #92-0036.

Artificially created channels connecting otherwise non-navigable bodies of water to navigable watercourses do not change the fundamental character of the non-navigable body to a navigable one, and artificially created impediments to passage do not deprive an otherwise conforming body of water of its navigable status. Williams, May 18, 1992, A.G. Op. #92-0036.

Admiralty law recognizes waters as being navigable when they are used or susceptible of being used as an artery of commerce, and bodies of water constitute an artery of commerce if they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted on water. Williams, May 18, 1992, A.G. Op. #92-0036.

While it is essential that a body of water be susceptible of being used as an artery of commerce in order to be classified as navigable water, it is not necessary that it actually be so utilized. Williams, May 18, 1992, A.G. Op. #92-0036.

It is not essential that the flow of water be sufficient at all times, or at all points, to constitute an artery of commerce, but is enough if there exists a naturally occurring channel or streambed connecting to the continuous highway of watercourses, which streambed contains some naturally occurring flow of water at ordinary water levels. Williams, May 18, 1992, A.G. Op. #92-0036.

Bodies of water which only communicate with navigable watercourses during flood stages do not meet the definition of navigable waters. Williams, May 18, 1992, A.G. Op. #92-0036.

Oxbow lakes, which are characterized by currents which reverse seasonally, running one direction when the Mississippi River rises and in the opposite direction when the River falls, are navigable waters. Williams, May 18, 1992, A.G. Op. #92-0036.

Definition of "navigable waters" requires that bodies of water suitable for casinos must be used or susceptible of being used as artery of commerce and must form in their ordinary condition, by themselves or by uniting with other waters, continued highway over which commerce is or may be carried on with other states or foreign countries in customary modes in which such commerce is conducted on water. Patton, July 14, 1993, A.G. Op. #93-0539.

Governing authorities may expend the specified percentage of funds received in any manner that will benefit educational purposes within the city. Nixon, May 12, 2006, A.G. Op. 06-0173.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Boats and Boating § 4 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Carriers, Form 47.1 (complaint, petition, or declaration by passenger on cruise ship against cruise line, slip and fall on stairs leading to dining room).

§ 27-109-3. Commission to promulgate regulations.

(1) The State Tax Commission shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this chapter as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this chapter.

(2) These regulations shall, without limiting the general powers herein conferred, include the following:

(a) Prescribing the method and form of application which any applicant for a privilege license must follow and complete before consideration of his application by the commission.

(b) Prescribing the information to be furnished by any applicant or licensee concerning his antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present.

(c) Prescribing the information to be furnished by a licensee relating to his employees.

(d) Requiring fingerprinting of an applicant or licensee, and casino and alcoholic beverage personnel of a licensee, or other methods of identification for such persons and the forwarding of all fingerprints taken pursuant to regulation to the Federal Bureau of Investigation.

(e) Prescribing the manner and procedure of all hearings conducted by the commission or any hearing examiner of the commission, including special rules of evidence applicable thereto and notices thereof.

(f) Requiring any applicant to pay all or any part of the fees and costs of investigation of such applicant as may be determined by the commission.

(g) Prescribing the manner and method of collection and payment of fees and issuance of licenses.

(h) Prescribing under what conditions a licensee may be deemed subject to revocation or suspension of his license.

(i) Requiring any applicant or licensee to waive any privilege with respect to any testimony at any hearing or meeting of the commission, except any privilege afforded by the Constitutions of the United States or this state.

(j) Requiring that any licensee or owner of ten percent (10%) or more of the operation shall not sell all or part of his ownership to a purchasing party until the purchasing party has met the requirements of this chapter.

SOURCES: Laws, 1989, ch. 480, § 2; Laws, 1990, ch. 573, § 3, eff from and after April 1, 1990.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the cross reference note. The reference to "19-3-77" was changed to "19-3-79". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Cross References — Exemption of cruise vessels from gambling restrictions, see §§ 19-3-79, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-17, 97-33-25, and 97-33-27.

Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

State Tax Commission generally, see § 27-3-1 et seq.

Penalties for violating this section, see § 27-109-13.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Boats and Boating § 4 et seq.

§ 27-109-5. Qualifications for license.

(1) Any person who the tax commission determines is qualified to receive a license or is found suitable under the provisions of this chapter, having due consideration for the proper protection of the health, safety, morals, good order and general welfare of the inhabitants of the State of Mississippi and the declared policy of this state, may be issued a state privilege license for the operation of a cruise vessel. The burden of proving his qualification to receive any license or be found suitable is on the applicant.

(2) An application to receive a license shall not be granted unless the commission is satisfied that the applicant is:

(a) A person of good character, honesty and integrity;

(b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of cruise vessels, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the operation of cruise vessels or the carrying on of the business and financial arrangements incidental thereto; and

(c) In all other respects qualified to be licensed or found suitable consistently with the declared policy of the state.

(3) A license to operate a cruise vessel shall not be granted unless the applicant has satisfied the commission that:

(a) He has adequate business probity, competence and experience, in the operation of cruise vessels or generally; and

(b) The proposed financing of the entire operation is:

(i) Adequate for the nature of the proposed operation; and

(ii) From a suitable source. Any lender or other source of money or credit which the commission finds does not meet the standards set forth in subsection (2) may be deemed unsuitable.

SOURCES: Laws, 1989, ch. 480, § 3, eff from and after passage (approved March 28,1989).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the cross reference note. The reference to "19-3-77" was changed to "19-3-79". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Cross References — Exemption of cruise vessels from gambling restrictions, see §§ 19-3-79, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-17, 97-33-25, and 97-33-27.

State Tax Commission generally, see § 27-3-1 et seq.

Determination of whether applicant satisfies requirements of this section as first step in application process, see § 27-109-7.

Penalties for violating this section, see § 27-109-13.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Boats and Boating § 4 et seq.

§ 27-109-7. Consideration of applications; privilege license; certificate of suitability for each vessel; bonding requirements.

(1) The State Tax Commission shall evaluate and consider any application for a license to operate a cruise vessel or vessel in a two-step process. First, the commission shall determine whether the applicant satisfies the requirements of Section 27-109-5. Secondly, the commission shall determine whether any cruise vessel or vessel which may be operated by the licensee complies with applicable state law. This bifurcated process requires the issuance of a privilege license to the applicant and a separate certificate of suitability for each cruise vessel or vessel operated by the licensee.

(2) For each step above the Tax Commission may:

(a) Deny the application;

(b) Remand the matter for such further investigation and reconsideration as the commission may order; or

(c) By majority vote of the members present, grant the application for a privilege license or certificate of suitability. For the purposes of this section, a tie vote of the commission upon an application does not constitute a recommendation of denial of the application.

(3) The privilege license granted under this chapter is specific to the applicant and shall remain in force and effect without regard to any cruise vessel or vessel operated by the licensee. However, no licensee shall operate a cruise vessel or vessel without a certificate of suitability for such cruise vessel or vessel.

(4) An applicant must provide a surety bond to the State Tax Commission in the amount of Two Hundred Fifty Thousand Dollars ($ 250,000.00) for the faithful performance of all requirements imposed by law, regulation or conditions of the license. The State Tax Commission may accept from the applicant, in lieu of a surety bond, cash, time certificates of deposit, direct United States Treasury obligations which are fully guaranteed by the United States Government, or United States Government agency obligations which are fully guaranteed by the government of the United States.

(5) If the commission is not satisfied that an applicant is qualified to be licensed under this chapter, the commission may cause to be made such investigation into and conduct such hearings concerning the qualifications of the applicant in accordance with its regulations as it may deem necessary.

(6) If the commission desires further investigation be made or to conduct any hearings, it shall so notify the applicant and set a date for hearing, if a hearing is requested by the applicant.

(7) The commission has full and absolute power and authority to deny any application for any cause it deems reasonable. If an application is denied, the commission shall prepare and file its written decision upon which its order denying the application is based.

SOURCES: Laws, 1989, ch. 480, § 4; Laws, 1990, ch. 573, § 4, eff from and after April 1, 1990.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the cross reference note. The reference to "19-3-77" was changed to "19-3-79". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Cross References — Exemption of cruise vessels from gambling restrictions, see §§ 19-3-79, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-17, 97-33-25, and 97-33-27.

Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

State Tax Commission generally, see § 27-3-1 et seq.

Issuance of privilege license after tender of bond required by this section, see § 27-109-9.

Application fee, see § 27-109-11.

Penalties for violating this section, see § 27-109-13.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Boats and Boating § 4 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

5A Am. Jur. Pl & Pr Forms (Rev), Carriers, Form 47.1 (complaint, petition, or declaration by passenger on cruise ship against cruise line, slip and fall on stairs leading to dining room).

§ 27-109-9. Issuance of license; requirements applicable to existing cruise vessel operations.

If satisfied that an applicant is eligible to receive a state privilege license for the operation of a cruise vessel or vessel, and upon tender of all license fees as required by law and regulation of the State Tax Commission and tender of such bond as required by Section 27-109-7 for the payment of license fees and taxes and the faithful performance of all requirements imposed by law or regulation or the conditions of the license, the commission shall issue to the applicant named, under the name or style designated, such license and/or certificate as may be appropriate or as is provided by law.

Any person operating a cruise vessel within the territorial jurisdiction of the State of Mississippi at the time of passage of this chapter shall be allowed to continue to operate without a privilege license or certificate of suitability until such time as the commission shall issue or deny a privilege license and a certificate of suitability. Any person operating a cruise vessel under authority of this chapter may employ his own full-time pilot for the cruise vessel, provided that any such employee shall meet the requirements of all applicable United States Coast Guard rules and regulations.

SOURCES: Laws, 1989, ch. 480, § 5; Laws, 1990, ch. 573, § 5, eff from and after April 1, 1990.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the cross reference note. The reference to "19-3-77" was changed to "19-3-79". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Cross References — Exemption of cruise vessels from gambling restrictions, see §§ 19-3-79, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-17, 97-33-25, and 97-33-27.

Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

State Tax Commission generally, see § 27-3-1 et seq.

License fee, see § 27-109-11.

Penalties for violating this section, see § 27-109-13.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Boats and Boating § 4 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 27-109-11. Fees; distribution of fees.

(1) Each applicant for a privilege license for a cruise vessel shall pay an application fee of Five Thousand Dollars ($5,000.00).

(2) Each licensee shall pay a license fee of Five Thousand Dollars ($5,000.00).

(3) Each cruise vessel licensed hereunder shall pay a boarding fee of Three Dollars and Fifty Cents ($3.50) per passenger to the commission. Of this fee, sixty percent (60%) shall be retained by the state, twenty percent (20%) shall be returned to the county of the port and twenty percent (20%) shall be returned to the municipality of the port.

SOURCES: Laws, 1989, ch. 480, § 6, eff from and after passage (approved March 28, 1989).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the cross reference note. The reference to "19-3-77" was changed to "19-3-79". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Cross References — Exemption of cruise vessels from gambling restrictions, see §§ 19-3-79, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-17, 97-33-25, and 97-33-27.

Cruise vessel as falling within the term "vessel" as used in this section, see § 27-109-1.

Term vessel as also meaning cruise vessel referred to in this section, see § 27-109-1.

Penalties for violating this section, see § 27-109-13.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Boats and Boating §§ 4 et seq.

§ 27-109-13. Penalties.

(1) Any person who violates any provision of Sections 27-109-1 through 27-109-11 shall be punished:

(a) For any offense, by imprisonment in the state penitentiary for not more than ten (10) years, or by a fine of not more than Ten Thousand Dollars ($10,000.00), or by both fine and imprisonment.

(b) For a second or subsequent offense, the court shall not suspend a sentence of imprisonment imposed pursuant to paragraph (a) of this subsection or grant probation to the person convicted.

(2) Any person who attempts, or two (2) or more persons who conspire, to violate any provision of Sections 27-109-1 through 27-109-11, each shall be punished by imposing the penalty provided in subsection (1) for the completed crime.

SOURCES: Laws, 1989, ch. 480, § 7, eff from and after passage (approved March 28, 1989).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the cross reference note. The reference to "19-3-77" was changed to "19-3-79". The Joint Committee ratified the correction at its July 8, 2004 meeting.

Cross References — Exemption of cruise vessels from gambling restrictions, see §§ 19-3-79, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-17, 97-33-25, and 97-33-27.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Boats and Boating §§ 4 et seq.

§ 27-109-15. State Tax Commission certification that it is exercising duties granted under Mississippi Gaming Control Act; licenses.

From and after the time that the State Tax Commission certifies to the Governor that it is exercising the duties granted to it under the Mississippi Gaming Control Act, the licensing and regulation of cruise vessels and vessels as provided for in this chapter shall terminate under the provisions hereof and shall thenceforth be implemented pursuant to the provisions of the Mississippi Gaming Control Act; and no license shall be granted, no fees imposed or collected, and no penalties assessed under the provisions of this chapter; but all such things shall be done pursuant to the provisions of the Mississippi

Gaming Control Act. No new license shall be issued under this chapter from and after the effective date of the Mississippi Gaming Control Act.

SOURCES: Laws, 1990, 1st Ex Sess, ch. 45, § 144, eff from and after passage (approved June 29, 1990).

Editor's Note — The Mississippi Gaming Control Act was enacted by Laws of 1990 Ex Sess, ch. 45, and codified predominately as a new Chapter 76, in Title 75. For a complete list of sections affected by Laws of 1990 Ex Sess, ch. 45, see the Statutory Tables volume.

Cross References — State Tax Commission generally, see § 27-3-1 et seq.

CHAPTER 111

Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018]

Sec.
27-111-1. Payment credit vouchers as credit against income tax and corporation franchise tax liability of certain telecommunications enterprises providing broadband telecommunications services to institutions of higher learning [Repealed effective July 1, 2018].

§ 27-111-1. Payment credit vouchers as credit against income tax and corporation franchise tax liability of certain telecommunications enterprises providing broadband telecommunications services to institutions of higher learning [Repealed effective July 1, 2018].

(1) The Governor shall be authorized to issue to a telecommunications enterprise that has contracted with the state to provide broadband telecommunications service to institutions of higher learning, a payment credit voucher in lieu of an equal amount of cash payment pursuant to the terms of the contract for services. The payment credit voucher shall entitle the telecommunications enterprise to a credit against the aggregate tax liabilities imposed on such telecommunications enterprise by Chapters 7 and 13 of Title 27, Mississippi Code of 1972, in an amount that is equal to such payment credit voucher.

(2) The tax credits in lieu of payment shall only be issued if agreed to by the telecommunications enterprise and authorized by the Governor with a signed payment credit voucher.

(3) The total amount of tax credits authorized under this section in any fiscal year shall not exceed Two Million Dollars ($2,000,000.00) in the aggregate.

(4) The excess, if any, of the credit allowed by this section over the aggregate tax liabilities imposed against the telecommunications enterprise by Chapters 7 and 13 of Title 27, Mississippi Code of 1972, may be utilized against the aggregate tax liabilities imposed by Chapters 7 and 13 of Title 27, Mississippi Code of 1972, on any related member with respect to the telecommunications enterprise. For purposes of this subsection, the term "related member" shall have the meaning given to such term by Section 27-7-17(2)(a)(iv). If the provider or any related member is unable to utilize the full amount of the credit voucher, then the remaining amount shall constitute an overpayment of the tax imposed by Chapter 7 of Title 27, Mississippi Code of 1972, and shall be refunded to the service provider as provided in Section 27-7-51. Any such overpayment shall be paid by the commissioner not later than ninety (90) days after the filing of the applicable tax return by the service provider. Interest on the overpayment shall be computed under the provisions of Section 27-7-315.

(5) The tax credits authorized by this section shall be used to assist the state in managing its cash flows, shall apply in addition to, and after the application of, all other credits applicable to the service provider and shall not be used in determining any cap placed on any other tax credits applicable to the telecommunications enterprise.

(6) For purposes of this subsection, the term "telecommunications enterprises" shall have the meaning given to such term by Section 57-73-21(14)(b).

(7) This section shall be repealed from and after July 1, 2018.

SOURCES: Laws, 2010, ch. 511, § 28; Laws, 2014, ch. 445, § 5, eff from and after July 1, 2014.

CHAPTER 113

Facilitating Business Rapid Response to State Declared Disasters Act of 2015

Sec.
27-113-1. Short title.
27-113-3. Legislative findings.
27-113-5. Definitions.
27-113-7. Certain exemptions for out-of-state businesses and employees conducting operations within the state for purposes of performing work or services related to declared state disaster or emergency.
27-113-9. Notification to Department of Revenue after out-of-state business enters state for purposes of responding to disaster or emergency; post disaster response period application of state laws and requirements.

§ 27-113-1. Short title.

This chapter may be cited as the "Facilitating Business Rapid Response to State Declared Disasters Act of 2015."

SOURCES: Laws, 2015, ch. 420, § 1, eff from and after passage (approved Mar. 29, 2015.)

§ 27-113-3. Legislative findings.

The Legislature finds that:

(a) During times of storm, flood, fire, earthquake, hurricane or other disaster or emergency, many businesses bring in resources and personnel from other states throughout the United States on a temporary basis to expedite the often enormous and overwhelming task of cleaning up, restoring and repairing damaged buildings, equipment and property or even deploying or building new replacement facilities in the state.

(b) This may involve the need for out-of-state businesses, including out-of-state affiliates of businesses based in the state, to bring in resources, property and/or personnel that previously have had no connection to the state, to perform activity in the state, including, but not limited to, repairing, renovating, installing, building, rendering services or other business activities and for which personnel may be located in the state for extended periods of time to perform such activities.

(c) During such time of operating in the state on a temporary basis solely for purposes of helping the state recover from the disaster or emergency, these businesses and individual employees should not be burdened by any requirements for business and employee taxes as a result of such activities in the state for a temporary period.

(d) To ensure that businesses may focus on quick response to the needs of the state and its citizens during a declared state disaster or emergency, it is appropriate for the Legislature to deem that such activity for a reasonable period of time before, during, and after the disaster or emergency for repairing and restoration of the often devastating damage to critical property and infrastructure in the state as defined in this chapter shall not establish presence, residency, nor doing business in the state nor any other criteria for purposes of state and local taxes, licensing and regulatory requirements.

SOURCES: Laws, 2015, ch. 420, § 2, eff from and after passage (approved Mar. 29, 2015.)

§ 27-113-5. Definitions.

As used in this chapter:

(a) "Registered business in the state" or "registered business" means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

(b) "Out-of-state business" means a business entity that, except for disaster or emergency-related work, has no presence in the state and conducts no business in the state whose services are requested by a registered business or by a state or local government for purposes of performing disaster or emergency-related work in the state. This shall also include a business entity that is affiliated with the registered business in the state solely through common ownership. The out-of-state business has no registrations or tax filings or nexus in the state other than disaster or emergency-related work during the tax year immediately preceding the declared state disaster or emergency.

(c) "Out-of-state employee" means an employee who does not work in the state, except for disaster or emergency-related work during the disaster response period.

(d) "Critical infrastructure" means property and equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water pipelines and related support facilities that services multiple customers or citizens, including, but not limited to, real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment.

(e) "Declared state disaster or emergency" means a disaster or emergency event:

(i) For which the Governor has issued a state of emergency proclamation; or

(ii) For which a presidential declaration of a federal major disaster or emergency has been issued.

(f) "Disaster response period" means a period that begins ten (10) days prior to the first day of the Governor's proclamation or the President's declaration, whichever occurs first, and that extends sixty (60) calendar days after the declared state disaster or emergency, or any longer period authorized by the Governor; however, in no event shall the disaster response period be more than one hundred twenty (120) days.

(g) "Disaster or emergency-related work" means repairing, renovating, installing, building, rendering services or other business activities that relate to critical infrastructure that has been damaged, impaired or destroyed by the declared state disaster or emergency.

SOURCES: Laws, 2015, ch. 420, § 3, eff from and after passage (approved Mar. 30, 2015.)

§ 27-113-7. Certain exemptions for out-of-state businesses and employees conducting operations within the state for purposes of performing work or services related to declared state disaster or emergency.

(1)(a) An out-of-state business that conducts operations within the state for purposes of performing work or services related to a declared state disaster or emergency during the disaster response period shall not be considered to have established a level of presence that would require that business to register, file and/or remit state or local taxes or that would require, except as otherwise provided in this section, that business or its out-of-state employees to be subject to any state licensing or registration requirements. This includes any and all state or local business licensing or registration requirements or state and local taxes or fees, including, but not limited to, unemployment insurance, occupational licensing fees, privilege taxes, sales and use tax or ad valorem tax on equipment brought into the state temporarily for use during the disaster response period and subsequently removed from the state, Public Service Commission or Secretary of State licensing and regulatory requirements. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business that is conducted in this state pursuant to this chapter shall be disregarded with respect to any filing requirements for such tax, including the filing required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, revenue or receipts the performance by an out-of-state business of any work in accordance with this chapter shall not be sourced to or shall not otherwise impact or increase the amount of income, revenue or receipts apportioned to this state.

(b) Any out-of-state employee shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes or to be subjected to tax withholdings or to file and pay any other state or local tax or fee during the disaster response period. This includes any related state or local employer withholding and remittance obligations, but does not include any transaction taxes or fees as described in subsection (2) of this section.

(2) Out-of-state businesses and out-of-state employees shall be required to pay transaction taxes and fees, including, but not limited to, fuel taxes or sales/use taxes on materials or services consumed or used in the state subject to sales/use tax, hotel taxes, car rental taxes or fees that the out-of-state affiliated business or out-of-state employee purchases for use or consumption in the state during the disaster response period, unless such taxes are otherwise exempted during a disaster response period.

(3) Any out-of-state business or out-of-state employee that remains in the state after the end of the disaster response period will become subject to the state's normal standards for establishing presence, residency or doing business in the state and will therefore become responsible for any business or employee tax requirements that ensue.

(4) Nothing in this section shall be construed to exempt any out-of-state business, out-of-state employee or individual from securing and paying applicable license and related fees imposed by professional licensing boards of this state.

SOURCES: Laws, 2015, ch. 420, § 4, eff from and after passage (approved Mar. 30, 2015.)

§ 27-113-9. Notification to Department of Revenue after out-of-state business enters state for purposes of responding to disaster or emergency; post disaster response period application of state laws and requirements.

(1)(a) The out-of-state business that enters the state shall, upon request, provide to the Department of Revenue a statement that it is in the state for purposes of responding to the disaster or emergency, which statement shall include the business' name, state of domicile, principal business address, federal tax identification number, date of entry and contact information.

(b) A registered business in the state shall, upon request, provide the information required in paragraph (a) of this subsection for any affiliate that enters the state that is an out-of-state business. The notification shall also include contact information for the registered business in the state.

(2) An out-of-state business or an out-of-state employee that remains in the state after the disaster response period shall complete state and local registration, licensing and filing requirements that ensue as a result of establishing the requisite business presence or residency in the state applicable under the existing rules.

(3) The Department of Revenue shall promulgate necessary regulations, develop and issue forms or online processes, and maintain and make available an annual record of any designations pursuant to this chapter.

SOURCES: Laws, 2015, ch. 420, § 5, eff from and after passage (approved Mar. 30, 2015.)

Index

A

ACCOUNTABILITY AND TRANSPARENCY ACT.

Website regarding expenditures of state funds and bond proceeds, §§27-104-151 to 27-104-167.
- Board of trustees of state institutions of higher learning.
  - IHL accountability and transparency website, §27-104-155.
- Community and junior colleges accountability and transparency website, §27-104-155.
- Community hospital accountability and transparency website, §27-104-155.
- Compliance examination.
  - State auditor, §27-104-158.
- Contents, §27-104-155.
- Date for all fiscal years included, §27-104-155.
- Definitions, §27-104-153.
- Development and operation.
  - Department of finance and administration, §27-104-155.
- Disbursement information, §27-104-155.
- Electronic summary of grants, §27-104-155.
- IHL accountability and transparency website, §27-104-155.
- Legislative branch expenditures.
  - No authority to review, approve or deny, §27-104-161.
  - Provisions applicable, §27-104-159.
- Legislative findings and intent, §27-104-152.
- Meetings of state agencies.
  - Publication on searchable website, §27-104-163.
- Mississippi accountability and transparency act.
  - Short title, §27-104-151.
- Phased-in plan for implementation of procurement portal, §27-104-165.
- Proprietary information not disclosed, §27-104-155.
- Public records act not superseded, §27-104-159.

ACCOUNTABILITY AND TRANSPARENCY ACT —Cont'd

Website regarding expenditures of state funds and bond proceeds —Cont'd
- Report of information by state agencies.
  - Form and timeline, §27-104-157.
  - Publication on searchable website, §27-104-167.
- Searchable website, §27-104-155.
  - Defined, §27-104-153.
- Time period for updating information, §27-104-155.
- Trade secrets not disclosed, §27-104-155.

ACTIONS.

Gasoline tax.
- Power to institute proceedings, §27-55-43.

Liquefied compressed gas tax.
- Power to institute proceedings, §27-59-45.

Lubricating oil tax.
- Power to institute proceedings, §27-57-31.

Special fuel tax.
- Institution of proceedings by commission, §27-55-551.
- Limitation of actions by state for recovery of additional amounts, §27-55-545.

Use tax.
- Prior suits not affected by provisions, §27-67-33.

ADOPTION.

Nonprofit organizations providing services.
- Sales tax exemptions, §27-65-111.

Sales tax exemptions.
- Nonprofit organizations providing services, §27-65-111.

AD VALOREM TAXATION.

Tax refunds, §§27-73-1 to 27-73-13.

AGENTS.

Sales tax.
- Liability of agents for out-of-state dealers, §27-65-55.

AGRICULTURE.
Farmers' markets.
  Sales tax exemption.
    State grown, made, processed products, §27-65-103.
Sales tax.
  Exemptions, §27-65-103.
    Concessions at religious or charitable events held at facilities, §27-65-111.
    Parking at agricultural facilities for religious or charitable events, §27-65-105.
  Rate.
    Retail sale of farm tractors and farm implements, §27-65-17.

AIR CONDITIONING.
Sales tax.
  Business of installation or repair of air conditioning, §27-65-23.

AIRCRAFT.
Jet aircraft engines.
  Use tax exemptions.
    Engines used for research and testing, §27-67-7.
Use tax exemptions.
  Jet aircraft engines used for research and testing, §27-67-7.

ALARM SYSTEMS.
Sales tax.
  Burglar alarm systems, §27-65-23.

ALCOHOLIC BEVERAGES.
Beer.
  Light wine and beer.
    Taxation.
      Breweries, §§27-71-501 to 27-71-511.
      General provisions, §§27-71-1 to 27-71-31.
      Specific provisions for light wine and beer, §§27-71-301 to 27-71-349.
Brewpubs.
  Alcoholic beverage taxes, §§27-71-501 to 27-71-511.
  Light wine and beer tax, §§27-71-301 to 27-71-349.
Charter ship operator's permit.
  Fees, §27-71-5.
Light wine and beer.
  Taxation.
    Breweries, §§27-71-501 to 27-71-511.
    General provisions, §§27-71-1 to 27-71-31.

ALCOHOLIC BEVERAGES —Cont'd
Light wine and beer —Cont'd
  Taxation —Cont'd
    Specific provisions for light wine and beer, §§27-71-301 to 27-71-349.
Permits or licenses.
  Charter ship operator's permit.
    Fees, §27-71-5.
  Privilege license tax, §27-71-5.
  Temporary theatre permit.
    Fees, §27-71-5.
Privilege license tax on permittees, §27-71-5.
Public places.
  Prohibition on public places, §27-71-5.
Sales.
  Tax, §27-65-25.
Taxes, §§27-71-1 to 27-71-31.
  Administration of provisions, §27-71-1.
  Alcoholism treatment and rehabilitation fund.
    Excise taxes.
      Markup for benefit of fund, §27-71-7.
  Bonds, surety.
    Manufacturers and retailers, §27-71-21.
  Breweries, §§27-71-501 to 27-71-511.
    Brands, §27-71-503.
    Criminal penalties, §27-71-511.
    Labels, §27-71-509.
    List of dealers and other persons having contact, §27-71-501.
    Revocation of permits for failure to furnish certain information, §27-71-505.
    Violations of provisions.
      Criminal penalties, §27-71-511.
      Effect, §27-71-507.
  Carriers.
    Off-premises retailers permits for common carriers.
      Reporting and payment of tax, §27-71-9.
  Common carriers.
    Regulations as to, §27-71-9.
  Construction of provisions, §27-71-31.
  Counterfeiting or reuse of labels, §27-71-17.
  Criminal penalties, §§27-71-5, 27-71-23.
    Breweries, §27-71-511.
    Counterfeiting or reuse of labels, §27-71-17.
    Light wine and beer tax, §27-71-313.
      Contraband light wine and beer, §27-71-335.

ALCOHOLIC BEVERAGES —Cont'd
Taxes —Cont'd
  Criminal penalties —Cont'd
    Light wine and beer tax —Cont'd
      Reuse of stamps, §27-71-313.
  Definitions, §27-71-3.
    Light wine and beer, §27-71-301.
  Enforcement, §27-71-1.
  Excise taxes, §27-71-7.
  General fund.
    Payment into, §27-71-29.
  Labels.
    Counterfeiting or reuse of labels.
      Criminal penalties, §27-71-17.
  Light wine and beer.
    General provisions, §§27-71-301 to 27-71-349.
  Mental health programs fund.
    Excise taxes.
      Markup for benefit of fund, §27-71-7.
  Payment, §27-71-29.
  Penalties, §27-71-5.
  Permits, §27-71-5.
    Forfeiture for violations, §27-71-23.
  Privilege taxes.
    Annual privilege taxes, §27-71-5.
  Purchases direct from manufacturer, §27-71-13.
  Records.
    Light wine and beer.
      Examination of records, §27-71-329.
      Manufacturers, distributors, wholesalers, retailers and brew pubs, §27-71-327.
    Persons engaged in business of selling alcoholic beverages, §27-71-25.
      Examination of records, §27-71-27.
  Reports.
    Light wine and beer.
      Wholesalers, §27-71-325.
  Transportation of alcoholic beverages, §27-71-15.
  Wholesale operations, §27-71-11.
Temporary theatre permit.
  Fees, §27-71-5.
Wine.
  Light wine and beer.
    Taxation.
      Breweries, §§27-71-501 to 27-71-511.
      General provisions, §§27-71-1 to 27-71-31.

ALCOHOLIC BEVERAGES —Cont'd
Wine —Cont'd
  Light wine and beer —Cont'd
    Taxation —Cont'd
      Specific provisions for light wine and beer, §§27-71-301 to 27-71-349.

ALCOHOLIC BEVERAGE TAXES.
Breweries, §§27-71-501 to 27-71-511.
Generally, §§27-71-1 to 27-71-31.
Light wine and beer, §§27-71-301 to 27-71-349.

ALIAS EXECUTIONS.
Sales tax, §27-65-67.

AMBULANCES.
Sales tax.
  Exemptions.
    Gross income received from operation of ambulance services, §27-65-107.

AMUSEMENT BUSINESS OR ACTIVITY.
Sales tax.
  Levy of tax, §27-65-22.

APIARIES.
Sales tax.
  Exemptions, §27-65-103.

APPEALS.
State board of tax appeals.
  Appellate review by taxpayers aggrieved by department of revenue actions, §§27-77-1 to 27-77-19.
Taxpayer appeals.
  Taxpayers aggrieved by department actions, §§27-77-1 to 27-77-19.

APPRAISALS AND APPRAISERS.
Tobacco tax.
  Appraisement of seized products, §27-69-55.

APPROPRIATIONS.
Accountability and transparency act.
  Website with information on expenditure of state funds and bond proceeds, §§27-104-151 to 27-104-167.
Finance and administration department.
  Reductions or revisions of budget estimates.
    Power to rescind or restore, §27-104-14.

APPROPRIATIONS —Cont'd
General fund.
  Limit of legislative appropriation from, §27-103-211.
Governor.
  Reductions or revisions of budget estimates.
    Power to rescind or restore, §27-104-14.
Mississippi accountability and transparency act.
  Website with information on expenditure of state funds and bond proceeds, §§27-104-151 to 27-104-167.
Website with information on expenditure of state funds and bond proceeds.
  Mississippi accountability and transparency act, §§27-104-151 to 27-104-167.

ARREST.
Tobacco tax.
  Agents of commissioner.
    Authority, §27-69-71.

ASSOCIATIONS.
Sales tax.
  Failure to file return, notice of assessment and damages, §27-65-35.
  Taxes due and unpaid, notice of assessment and damages, §27-65-37.

ATHLETICS.
Sales tax on amusements.
  Activities exempted, §27-65-22.

ATTACHMENT.
Sales tax.
  Judgment for taxes as basis for issuance of writ of attachment, §27-65-57.

ATTORNEY GENERAL.
Budgets.
  Injunctive action against noncomplying agency, §27-104-29.
Cigarettes and tobacco products.
  Nonsettling manufacturer cigarettes.
    Disclosure of information to determine compliance, §27-70-23.

ATTORNEY GENERAL —Cont'd
Finance and administration department.
  Legal services.
    Prior clearance required for payment of certain claims for, §27-104-105.
Iran divestment act of 2015.
  Notice to attorney general describing provisions, §27-106-23.
Sales tax returns and information.
  Release to, §27-65-81.
Tax reciprocity law.
  Foreign attorneys.
    Employment to collect taxes, §27-75-15.
  Power to bring suits in foreign states to collect taxes, §27-75-13.

ATTORNEYS' FEES.
Tax reciprocity law.
  Employment of foreign attorneys to collect taxes, §27-75-15.

AUDITS AND AUDITORS.
Cruise vessel privilege licenses.
  Commission powers, §27-109-1.
Public accounts, auditor of.
  County tax collectors.
    Settlement with auditor of public accounts, §27-105-23.
References to state fiscal officer deemed to mean finance and administration executive director, §27-104-6.

B

BAILMENTS.
Tobacco tax.
  Transient vendor.
    Bailee defined as including, §27-69-3.

BASEBALL.
Sales tax on amusements.
  Activities exempted, §27-65-22.

BEER.
Taxation.
  General provisions for taxation of alcoholic beverages, §§27-71-1 to 27-71-31.
  Light wine and beer, §§27-71-301 to 27-71-349.

BEES AND BEEKEEPING.
Sales tax.
  Exemptions, §27-65-103.

BILLIARD HALLS.
Sales tax.
  Billiards, pool or domino parlors, §27-65-23.

BILLS OF LADING.
Gasoline tax.
  Evidence of product transported, §27-55-53.
Interstate commercial carriers motor fuel tax.
  Fraudulent acts as to bills of sale, §27-61-21.
Light wine and beer tax.
  Requirements while transporting, §§27-71-315, 27-71-317.
Lubricating oil tax.
  Evidence of product transported, §27-57-41.
Special fuel tax.
  Evidence of product transported, §27-55-559.
  Evidence of sales, §27-55-545.
  Inspection, §27-55-547.

BIOMASS.
Renewable crude oil from biomass.
  Sales tax exemption.
    Construction and equipment for facility producing, §27-65-101.

BLOOD.
Sales tax exemptions.
  Sales to Mississippi blood services, §27-65-111.

BOARD OF REVIEW, §27-77-3.
Appellate review of department of revenue actions.
  Generally, §§27-77-1 to 27-77-19.

BOARD OF TAX APPEALS.
Appellate review of department of revenue actions.
  Generally, §§27-77-1 to 27-77-19.

BOARDS AND COMMISSIONS.
Board of review, §27-77-3.
Municipality imposing special sales tax.
  Commission, §27-65-241.
State depository commission, §§27-105-1 to 27-105-37.

BOATS AND OTHER SMALL WATERCRAFT.
Alcoholic beverage licenses.
  Charter ship operator's permit.
    Fees, §27-71-5.
Cruise vessels.
  Privilege licenses, §§27-109-1 to 27-109-15.
Sales tax.
  Rate.
    Repairing and serving, §27-65-23.

BOND ISSUES.
Accountability and transparency act.
  Website with information on expenditure of state funds and bond proceeds, §§27-104-151 to 27-104-167.
Mississippi accountability and transparency act.
  Website with information on expenditure of state funds and bond proceeds, §§27-104-151 to 27-104-167.
Website with information on expenditure of state funds and bond proceeds.
  Mississippi accountability and transparency act, §§27-104-151 to 27-104-167.

BONDS, SURETY.
Alcoholic beverage taxes.
  Manufacturers and retailers, §27-71-21.
Cruise vessels.
  Privilege licenses, §27-109-7.
Finance and administration department.
  Executive director, §27-104-5.
Gasoline tax.
  Permit applications, §27-55-7.
Light wine and beer tax.
  Manufacturers, wholesalers and brew pubs, §27-71-311.
Liquefied compressed gas tax.
  Distributor permit applications, §27-59-7.
Lubricating oil tax.
  Distributors.
    Permit applications, §27-57-7.
Sales tax.
  Failure of sureties to pay tax.
    Notice, §27-65-57.

BONDS, SURETY —Cont'd
Sales tax —Cont'd
  Permit to engage in business, §27-65-27.
  Tax liability.
    Commissioner may require bond of taxpayer, §27-65-33.
Special fuel tax.
  Distributor permit.
    Applicant, §27-55-507.
Taxpayer appeals.
  Petition to chancery court, §27-77-7.
Tobacco tax.
  Claims for seized products.
    Filing, §27-69-55.
  Stamps.
    Consignment to wholesalers without advance payment, §27-69-75.

BOOKS.
Digital books.
  Defined, §27-65-26.
  Sale tax.
    Sale, rental, lease of specified digital products, §27-65-26.
  Use tax.
    Generally, §§27-67-1 to 27-67-33.

BOWLING ALLEYS.
Sales tax, §27-65-23.

BREWERIES.
Alcoholic beverage taxes, §§27-71-501 to 27-71-511.

BREWPUBS.
Light wine and beer tax.
  General provisions, §§27-71-301 to 27-71-349.

BROADBAND TECHNOLOGY DEVELOPMENT.
Taxation.
  Credit against income tax and franchise tax for certain investments.
    Telecommunications service providing broadband to colleges and universities.
      Payment credit voucher issued as credit against tax, §27-111-1.
Telecommunications service providing broadband to colleges and universities.
  Payment credit voucher issued as credit against corporate franchise and income taxes, §27-111-1.

BROADCASTING.
Taxation, §27-65-23.

BUDGET REFORM ACT OF 1992, §§27-103-201 to 27-103-213.

BUDGETS.
Accountability and transparency act.
  Expenditures of state funds and bond proceeds.
    Website, §§27-104-151 to 27-104-167.
Attorney general.
  Injunctive action against noncomplying agency, §27-104-29.
Budget reform act of 1992, §§27-103-201 to 27-103-213.
  Capital expense fund, §27-103-303.
    Unencumbered cash balance in general fund at close of fiscal year.
      Distribution to, §27-103-213.
  Citation of act, §27-103-201.
  General expense fund.
    Unencumbered cash balance in general fund at close of fiscal year.
      Distribution, §27-103-213.
  General fund.
    Distribution.
      Unencumbered cash balance at close of fiscal year, §27-103-213.
    Limit on legislative appropriation from, §27-103-211.
    Unencumbered cash balance at close of fiscal year.
      Distribution, §27-103-213.
  General fund reserve.
    Abolished, §27-103-205.
  General fund stabilization reserve.
    Abolished, §27-103-205.
  Municipal revolving fund.
    Unencumbered cash balance in general fund at close of fiscal year.
      Distribution to, §27-103-213.
  Reports, §27-103-209.
  Working cash balance revolving fund.
    Abolished, §27-103-207.
  Working cash-stabilization reserve fund, §27-103-203.
    Transfer of balances remaining in abolished funds to, §§27-103-205, 27-103-207.
    Transfers from fund to cover cash flow deficiencies, §27-103-204.

BUDGETS —Cont'd
Budget reform act of 1992 —Cont'd
  Working cash-stabilization reserve fund —Cont'd
    Unencumbered cash balance in general fund at close of fiscal year.
      Distribution, §27-103-213.
Budget requests, §27-103-129.
  Failure or refusal to file, §27-103-131.
Budget transparency and simplification act of 2016, §§27-104-201 to 27-104-205.
  Applicability of provisions, §27-104-203.
  Appropriation limitations, §27-104-205.
  Defrayal of expenses by appropriation, §27-104-205.
  Interagency fees for services or resources, prohibition, §27-104-203.
  Title, §27-104-201.
Cash flow deficiencies.
  Transfers to cover, §27-103-204.
Contingency fund.
  Created, §27-103-301.
Deepwater Horizon settlement funds.
  Deposit into budget contingency fund, §27-103-302.
Definitions, §27-103-103.
Department of transportation.
  Revision of funding allocations, §27-104-13.
    Rescission or restoration of reductions or revisions, prohibition, §27-104-14.
Endowment funds.
  Applicability of budget procedures, §27-103-105.
Expenditures of state funds and bond proceeds.
  Website containing information.
    Mississippi accountability and transparency act, §§27-104-151 to 27-104-167.
Federal funds.
  Revenue maximization contracts, §27-104-81.
Gifts.
  Private gifts not exempt from budget procedures, §27-103-105.
Governor.
  Budget officer.
    Employment by governor, §27-103-139.

BUDGETS —Cont'd
Highways.
  Division of state aid road construction, §27-103-127.
Indemnification.
  Revenue maximization contracts.
    Federal funds, §27-104-81.
Injunctions.
  Noncompliance with provisions by agencies, §27-104-29.
Inventory of programs and activities from certain state departments.
  Performance budgeting and strategic planning, §27-103-159.
Joint legislative budget committee, §§27-103-101 to 27-103-139.
Legislative budget office, §§27-103-101 to 27-103-139.
Limitation on expenditures, §27-103-125.
Mississippi accountability and transparency act.
  Expenditures of state funds and bond proceeds.
    Website, §§27-104-151 to 27-104-167.
Mississippi performance budget and strategic planning act of 1994, §§27-103-151 to 27-103-159.
Parts of state budget, §27-103-121.
  Contents, §§27-103-123 to 27-103-127.
Performance budgeting and strategic planning, §§27-103-151 to 27-103-159.
  Agency 5-year strategic plans.
    Review, §27-103-155.
  Awards.
    Innovation incentive awards, §27-103-157.
  Citation of act, §27-103-151.
  Evaluation of performance.
    Accomplishments, §27-103-155.
  Innovation incentive program to develop and implement innovative cost saving measures.
    Establishment, §27-103-157.
  Inventory of programs and activities from certain state departments, §27-103-159.
  Performance measurement data.
    Maintaining and reporting, §27-103-153.
  Performance targets.
    Appropriation bills to include, §27-103-153.
  Purpose of act, §27-103-151.

BUDGETS —Cont'd

Ports and harbors, §27-103-127.

Preparation of state budget, §27-103-113.

Recommendations.
  Additional taxes or revenue sources, §27-103-125.

Research funds.
  Applicability of budget procedures, §27-103-105.

Revenue maximization contracts.
  Federal funds, §27-104-81.

Revision of budget estimates for certain agencies, §27-104-13.
  Rescission or restoration of reductions or revisions, prohibition, §27-104-14.

Separation of items.
  Proposed budgets of state agencies, §27-103-125.

State departments and agencies.
  Accountability and transparency act.
    Expenditures of state funds and bond proceeds.
      Website, §§27-104-151 to 27-104-167.
  Allotment period, §27-104-17.
  Availability of funds after approval of operating budget, §27-104-19.
  Budget requests, §§27-103-129, 27-103-131.
  Estimates.
    Revision of budget estimates for certain agencies, §§27-104-13, 27-104-15.
    Time for filing budget estimates, §27-104-17.
  Expenditure by agencies, §27-104-11.
  Expenditures of state funds and bond proceeds.
    Website containing information.
      Mississippi accountability and transparency act, §§27-104-151 to 27-104-167.
  Federal funds.
    Applicability of provisions to funds granted or allotted under act of congress, §27-104-27.
    Applications for, §27-104-21.
  Information to be furnished by revenue producing agencies, §27-103-135.
  Injunctive action against noncompliance with provisions, §27-104-29.

BUDGETS —Cont'd

State departments and agencies —Cont'd
  Mississippi accountability and transparency act.
    Expenditures of state funds and bond proceeds.
      Website, §§27-104-151 to 27-104-167.
  Obligations or indebtedness incurred in name of agency.
    Payment of claims from prior fiscal year, §27-104-25.
  Reports to legislative budget office, §§27-103-107, 27-103-109.
  Revision of budget estimates for certain agencies, §27-104-13.
    Hearings, §27-104-15.
    Rescission or restoration of reductions or revisions, prohibition, §27-104-14.
  State fiscal officer.
    Submission of agency operating budget to, §27-104-9.
  Visitation of state agencies by director of legislative budget office, §27-103-133.
  Website.
    Expenditures of state funds and bond proceeds.
      Mississippi accountability and transparency act, §§27-104-151 to 27-104-167.

State fiscal officer.
  Agency operating budgets.
    Submission to, §27-104-9.

State-source special funds, §27-104-13.
  Reduction of allocation, §27-104-13.

Submission of budget to legislature by governor, §27-103-139.

Summary of state budget, §27-103-121.

Universities and colleges, §27-103-127.

BUDGET TRANSPARENCY AND SIMPLIFICATION ACT OF 2016, §§27-104-201 to 27-104-205.

BUILDINGS AND CONSTRUCTION.

Sales tax.
  Exemptions.
    Materials used in construction of buildings, §27-65-101.

BURDEN OF PROOF.
Taxpayer appeals.
Chancery court appeals, §27-77-7.
Tax refunds.
Taxes erroneously paid.
Taxpayer required to prove he bore burden of tax, §27-73-3.

BURGLAR ALARM SYSTEMS.
Sales tax, §27-65-23.

BUTANE.
Liquefied compressed gas tax.
General provisions, §§27-59-1 to 27-59-325.

BUTYLENE.
Liquefied compressed gas tax.
General provisions, §§27-59-1 to 27-59-325.

C

CABLE TELEVISION.
Taxation, §27-65-23.

CAPITAL EXPENSE FUND, §27-103-303.
Unencumbered cash balance in general fund at close of fiscal year.
Distribution to, §27-103-213.

CAR RENTALS.
Sales tax, §27-65-231.

CARRIERS.
Alcoholic beverage taxes.
Off-premises retailers permits for common carriers.
Reporting and payment of tax, §27-71-9.
Tobacco tax.
Applicability of provisions to carriers, §27-69-39.

CAR WASHES.
Sales tax, §27-65-23.

CASINOS.
Sales tax.
Floating structures.
Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.

CELL PHONES.
Ringtones.
Defined, §27-65-26.

CELL PHONES —Cont'd
Ringtones —Cont'd
Sales tax.
Sale, rental, lease of specified digital products, §27-65-26.

CHANCERY COURTS.
Appeals.
Taxpayer appeals.
Assessment, refund, tag penalty, §27-77-7.
Permit, tag, title, IFTA license, §27-77-13.
Clerks of court.
County depositories.
Clerk to perform duties of county treasurer, §27-105-343.
Taxpayer appeals.
Assessment, refund, tag penalty, §27-77-7.
Permit, tag, title, IFTA license, §27-77-13.

CHARITABLE ORGANIZATIONS.
Professional golf tournament hosted by organization.
Sales tax exemption, §27-65-101.
Sales tax exemption.
Amusements, activities exempted, §27-65-22.
Food sold to charitable organization for food bank, §27-65-111.
Organization hosting professional golf tournament, §27-65-101.
Tobacco tax.
Donations of tobacco.
Exemption, §27-69-21.

CHARTER BOATS.
Alcoholic beverage licenses.
Charter ship operator's permit.
Fees, §27-71-5.

CHECKS.
Light wine and beer tax.
Remittances, §27-71-337.
Local governments' depositories.
Acceptance by banks of checks payable to county, municipality, political subdivision or body politics, §27-105-369.
Sales tax.
Remittances, §27-65-73.
State departments and agencies.
Acceptance by banks of checks payable to state agency, §27-105-37.

CHECKS —Cont'd
State treasurer.
  Depositories for state funds.
    Failure to pay treasurer's check, §27-105-25.
Tobacco tax.
  Remittances, §27-69-75.

CHEROOTS.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.

CHEWING TOBACCO.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.

CHILDREN'S MUSEUM.
Sales of items to, sales tax exemption, §27-65-111.

CHILD SUPPORT UNIT.
Sales tax returns and information.
  Release of information to, §27-65-81.

CHOCTAW INDIANS.
Sales tax.
  Exemptions, §§27-65-105, 27-65-111, 27-65-215.
  Tribal tax, §§27-65-211 to 27-65-221.
Tribal tax, §§27-65-211 to 27-65-221.
  Collection agreements.
    Approval, §27-65-219.
    Duration, §27-65-221.
    Entry into, §27-65-217.
    Renewal, §27-65-221.
  Definitions, §27-65-211.
  Exemption from sale or gross receipts tax, §27-65-215.
  Legislative findings, §27-65-213.
  Tax collection agreements, §§27-65-217 to 27-65-221.

CHRISTMAS TREES.
Sales tax exemption.
  Agricultural products, §27-65-103.

CIGARETTES AND TOBACCO PRODUCTS.
Nonsettling manufacturer cigarettes, §§27-70-1 to 27-70-23.
  Definitions, §27-70-3.
  Disclosure of information to determine compliance, §27-70-23.
  Fee on sale, use, consumption, distribution.
    Disclosure of information to determine compliance, §27-70-23.

CIGARETTES AND TOBACCO PRODUCTS —Cont'd
Nonsettling manufacturer cigarettes —Cont'd
  Fee on sale, use, consumption, distribution —Cont'd
    Penalties for noncompliance, §27-70-19.
    Report required of distributor, §27-70-9.
  Noncompliance, penalties, §27-70-19.
  Purpose of chapter, §27-70-1.
  Report required of distributor, §27-70-9.
  Sales tax law, applicability, §27-70-19.
Sale of cigarettes judged unfit for use and consumption, §27-69-49.
Tobacco equity tax, §27-70-5.
  Noncompliance, penalties, §27-70-19.
  Sales tax law, applicability, §27-70-19.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.
  Sale of cigarettes judged unfit for use and consumption, §27-69-49.
  Tobacco equity tax, §27-70-5.

CIGARS.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.

CITY PORT COMMISSIONS.
Taxing entities, reports, §27-101-21.

CLOTHES.
Sales tax holiday, §27-65-111.

COLLECTION AGENCIES.
Tax reciprocity law.
  Use of out-of-state collection agencies to collect delinquent taxes, §27-75-16.

COLLEGES AND UNIVERSITIES.
Accountability and transparency act.
  IHL accountability and transparency website, §27-104-155.
Athletic events.
  Sales tax on amusements.
    Activities exempted, §27-65-22.
Board of trustees of state institutions of higher learning.
  IHL accountability and transparency website, §27-104-155.
Budgets, §27-103-127.

COLLEGES AND UNIVERSITIES —Cont'd
Expenditure of state funds.
  IHL accountability and transparency website, §27-104-155.
IHL accountability and transparency website, §27-104-155.
Reports.
  Annual reports, §§27-101-1 to 27-101-5.
Sales tax.
  Distribution of tax revenue to, §27-65-75.

COMMON CARRIERS.
Interstate commercial carriers motor fuel tax.
  General provisions, §§27-61-1 to 27-61-33.

COMMUNITY AND JUNIOR COLLEGES.
Accountability and transparency act.
  Community and junior colleges accountability and transparency website, §27-104-155.
Community college board.
  Community and junior colleges accountability and transparency website, §27-104-155.
Expenditure of state funds.
  Community and junior colleges accountability and transparency website, §27-104-155.
Sales tax.
  Distribution of revenue to, §27-65-75.

COMPENSATING TAXES.
Salesmen's tax, §§27-67-501 to 27-67-511.
Use tax generally, §§27-67-1 to 27-67-33.

COMPUTERS AND SOFTWARE.
Sales tax.
  Software sales and services, §27-65-23.

CONFIDENTIALITY OF INFORMATION.
Sales tax.
  Returns, §27-65-81.
Taxpayer appeals to board of review and board of tax appeals, §27-77-15.

CONFIDENTIALITY OF INFORMATION —Cont'd
Tax returns, exceptions, violations, criminal penalty.
  Sale tax, §27-65-81.

CONFLICTS OF INTEREST.
County depositories.
  Bids to keep county funds, §27-105-305.

CONTEMPT.
Tobacco tax.
  Examination of books and records.
    Failure of person summoned to present books or records, or failure or refusal to testify, §27-69-35.

CONTRABAND.
Tobacco tax.
  Confiscation, §§27-69-53 to 27-69-57.

CONTRACTORS.
Sales tax.
  Distribution of proceeds derived from contractor's taxes, §27-65-75.
  Levy on business of contracting, §27-65-21.

CORPORATION FRANCHISE TAX.
Broadband technology development.
  Telecommunications service providing broadband to colleges and universities.
    Payment credit voucher issued as credit against tax, §27-111-1.
Credits.
  Broadband technology development.
    Telecommunications service providing broadband to colleges and universities.
      Payment credit voucher issued as credit against tax, §27-111-1.
Telecommunications service providing broadband to colleges and universities.
  Payment credit voucher issued as credit against tax, §27-111-1.

CORPORATIONS.
Sales tax.
  Failure to file return, notice of assessment and damages, §27-65-35.

CORPORATIONS —Cont'd
Sales tax —Cont'd
  Taxes due and unpaid, notice of assessment and damages, §27-65-37.

CORRECTIONS.
Department of corrections.
  Budget.
    Performance budgeting and strategic planning.
      Evaluation of performance and review of plans, exemption from requirements, §27-103-155.
      Inventory of programs and activities from certain state departments, §27-103-159.
      Performance measurement data and targets, exemption from requirements, §27-103-153.

COTTON WAREHOUSES.
Sales taxes.
  Distribution of proceeds derived from sales by, §27-65-75.

COUNTIES.
Depositories.
  Local governments' depositories generally, §§27-105-301 to 27-105-371.
Emergency aid to local governments loan and grant program, §27-107-321.
Gasoline, special fuel and compressed gas excise taxes.
  Exemption, §27-55-12.
Sales tax.
  Distribution of proceeds, §27-65-75.
  Exemptions.
    Sales to counties, §27-65-105.
Taxation.
  Reports of taxing entities, §27-101-21.

COUNTY PORT AND HARBOR COMMISSIONS.
Taxing entities, reports, §27-101-21.

COUNTY PORT AUTHORITIES.
Sales tax levy, §27-65-20.

COUNTY TREASURERS.
Chancery clerks.
  Performance of duties of county treasurers, §27-105-343.

COUNTY TREASURERS —Cont'd
Depositories for funds of local governments, §§27-105-305, 27-105-317.
  Traffic in public funds prohibited, §27-105-345.

CREDIT CARDS.
Finance and administration department.
  Electronic payment.
    Policies to be established, §27-104-33.

CRIMES.
Alcoholic beverage taxes, §§27-71-5, 27-71-23.
  Breweries, §27-71-511.
  Counterfeiting or reuse of labels, §27-71-17.
  Light wine and beer, §27-71-347.
    Reuse of stamps, §27-71-313.
Cigarettes.
  Sale of cigarettes judged unfit for use and consumption, §27-69-49.
County depositories, §§27-105-345, 27-105-347.
Cruise vessels.
  Privilege licenses, §27-109-13.
Depositories for state funds.
  Failure to perform duties, §27-105-29.
  Loan or removal of state funds, §27-105-27.
Gasoline tax.
  Diversion of gasoline shipment, §27-55-53.
  Metering requirements, §27-55-35.
  Seals on vessels, §27-55-33.
  Shipping documentation violations, §27-55-53.
  Unloading taxable petroleum products, §27-55-33.
Interstate commercial carriers motor fuel tax, §27-61-21.
Local governments' depositories.
  County depositories.
    Obstructing bids, §27-105-313.
Sales tax, §27-65-85.
  Violations of requirements as to collection by seller, §27-65-31.
Special fuel tax.
  Distributor of special fuel.
    Operating without permit, §27-55-509.

CRIMES —Cont'd
Special fuel tax —Cont'd
  Diversion of special fuel shipment, §27-55-559.
  Highway construction equipment.
    Unlawful purchase of untaxed fuel for use in, §27-55-569.
  Inspections.
    Refusal to allow, §27-55-547.
  Metering requirement violations, §27-55-543.
  Shipping documentation violations, §27-55-559.
Tobacco tax.
  Falsely representing self as agent of commissioner, §27-69-71.
  Permits.
    Engaging in business before permit procured or after permit cancelled, §27-69-7.
    Engaging in business without having secured permit, §27-69-11.
  Reuse of stamps, §27-69-47.
  Sale of cigarettes judged unfit for use and consumption, §27-69-49.

CRUISE VESSELS.
Privilege licenses, §§27-109-1 to 27-109-15.
  Administration of provisions, §27-109-1.
  Audit of papers, books and records, §27-109-1.
  Bonds, surety, §27-109-7.
  Certificate of suitability for each vessel, §27-109-7.
  Consideration of applications, §27-109-7.
  Definitions, §27-109-1.
  Existing cruise vessel operations.
    Applicability to, §27-109-9.
  Fees, §27-109-11.
  Gaming control act.
    Licensing and regulation under, §27-109-15.
  Inspection of premises, equipment and supplies by commission, §27-109-1.
  Issuance, §27-109-9.
  Operator of any cruise vessel.
    Identified as owner or lessee, §27-109-1.
  Penalties, §27-109-13.
  Qualifications for license, §27-109-5.
  Required, §27-109-1.

CRUISE VESSELS —Cont'd
Privilege licenses —Cont'd
  Rules and regulations, §27-109-3.
  Seizure and impoundment of equipment or supplies, §27-109-1.
  Subpoenas, issuance.
    Commission powers, §27-109-1.
Sales tax.
  Floating structures.
    Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.

D

DAIRIES AND DAIRY PRODUCTS.
Sales tax on materials used in repairing or expanding dairy producers' facilities.
  Rate of tax, §27-65-17.

DAMAGES.
Use tax.
  Failure to make return and pay tax, §27-67-19.

DECALS.
Liquefied compressed gas tax.
  Compressed gas users decal for motor vehicles, §27-59-29.
    Penalty for operating without, §27-59-31.

DEFINED TERMS.
Agency.
  Accountability and transparency act, §27-104-153.
  Appellate review of department of revenue actions, §27-77-1.
Air-to-ground radiotelephone service.
  Sales tax, telecommunications providers, §27-65-19.
Armed forces.
  Gasoline tax, §27-55-5.
  Liquefied compressed gas tax, §27-59-3.
  Special fuel tax, §27-55-505.
Assets classified loss.
  Depositories for state funds, §27-105-5.
  Local governments' depositories, §27-105-315.
Aviation gasoline.
  Gasoline tax, §27-55-5.
Bank.
  State depository commission, §27-105-3.

DEFINED TERMS —Cont'd
Biomass.
  Sales tax exemptions, §27-65-101.
Blender.
  Gasoline tax, §27-55-5.
Blend stock.
  Gasoline tax, §27-55-5.
Board of review.
  Appellate review of department of revenue actions, §27-77-1.
Bonded distributor of gasoline.
  Gasoline tax, §27-55-5.
Bonded distributor of special fuel, §27-55-505.
Bottom-hole contribution.
  Oil and gas well contracting, §27-65-21.
Brand family.
  Nonsettling manufacturer cigarettes, §27-70-3.
Brew pub.
  Light wine and beer tax, §27-71-301.
Bundled transaction.
  Sales tax, telecommunications providers, §27-65-19.
Bunker oil.
  Special fuel tax, §27-55-505.
Business.
  Sales tax, §27-65-9.
Call-by-call basis.
  Sales tax, telecommunications providers, §27-65-19.
Certified automated system.
  Sales and use tax administration law, §27-68-3.
Certified service provider.
  Sales and use tax administration law, §27-68-3.
Cigarette.
  Nonsettling manufacturer cigarettes, §27-70-3.
Class A distributor.
  Lubricating oil tax, §27-57-5.
Communications channel.
  Sales tax, telecommunications providers, §27-65-19.
Compressed gas, §27-59-3.
  User tax, §27-59-303.
Compressed natural gas, §27-59-3.
Construction activity.
  Sales tax on construction activity at refinery, §27-65-24.
Consumer.
  Light wine and beer tax, §27-71-301.
  Special fuel tax, §27-55-505.

DEFINED TERMS —Cont'd
Consumer —Cont'd
  Tobacco tax, §27-69-3.
Consumption.
  Use tax, §27-67-3.
Contraband tobacco.
  Tobacco tax, §27-69-3.
Contract.
  Accountability and transparency act, §27-104-155.
Critical infrastructure.
  Facilitating business rapid response to state declared disasters, §27-113-5.
Cruise vessel, §27-109-1.
Customer.
  Sales tax, telecommunications providers, §27-65-19.
Customer channel termination point.
  Sales tax, telecommunications providers, §27-65-19.
Custom processing.
  Sales tax, §27-65-11.
Custom processor.
  Liquefied compressed gas tax, §27-59-303.
  Sales tax, §27-65-11.
Dairy producers.
  Sales tax, §27-65-17.
Dealer.
  Tobacco tax, §27-69-3.
Decedents' estates.
  Tax refunds, §27-73-9.
Declared state disaster or emergency.
  Facilitating business rapid response to state declared disasters, §27-113-5.
Delivery charges.
  Sales tax, §27-65-3.
Denial.
  Appellate review of department of revenue actions, §27-77-1.
Designated representative.
  Appellate review of department of revenue actions, §27-77-1.
Diesel gallon equivalent.
  Liquefied compressed gas tax, §27-59-3.
Digital audio-visual works.
  Sales tax, §27-65-26.
Digital audio works.
  Sales tax, §27-65-26.
Digital books.
  Sales tax, §27-65-26.

DEFINED TERMS —Cont'd
Digital code.
  Sales tax, §27-65-26.
Disaster or emergency-related work.
  Facilitating business rapid response to state declared disasters, §27-113-5.
Disaster response period.
  Facilitating business rapid response to state declared disasters, §27-113-5.
Distributing agent.
  Tobacco tax, §27-69-3.
Distributor.
  Light wine and beer tax, §27-71-301.
  Liquefied compressed gas tax, §27-59-3.
  Nonsettling manufacturer cigarettes, §27-70-3.
  Sales tax, §27-65-5.
  Tobacco tax, §27-69-3.
Distributor of gasoline.
  Gasoline tax, §27-55-5.
Distributor of special fuel, §27-55-505.
Doing business.
  Sales tax, §27-65-9.
Driver.
  Interstate commercial carriers motor fuel tax, §27-61-3.
Drop shipment.
  Tobacco tax, §27-69-3.
Dry-hole contribution.
  Sales tax, §27-65-21.
Durable medical equipment.
  Sales tax exemptions, §27-65-111.
Dyed diesel fuel.
  Special fuel tax, §27-55-505.
Dyed kerosene.
  Special fuel tax, §27-55-505.
Electronically transferred.
  Sales tax, §27-65-26.
End user.
  Sales tax, §27-65-26.
    Telecommunications providers, §27-65-19.
Energy sector of Iran.
  Iran divestment act of 2015, §27-106-5.
Engine.
  Liquefied compressed gas tax, §27-59-303.
Entity.
  Accountability and transparency act, §27-104-153.

DEFINED TERMS —Cont'd
Equipment used in the deployment of broadband technologies.
  Sales tax exemptions, §27-65-101.
Evidence-based program.
  Performance budgeting and strategic planning, §27-103-159.
Expenditure of state funds.
  Accountability and transparency act, §27-104-153.
Expenses.
  Iran divestment act of 2015, §27-106-5.
First sale.
  Tobacco tax, §27-69-3.
For agricultural or maritime purposes.
  Gasoline tax, §27-55-5.
For aviation purposes.
  Gasoline tax, §27-55-5.
For domestic purposes.
  Gasoline tax, §27-55-5.
For industrial purposes.
  Gasoline tax, §27-55-5.
For nonhighway purposes.
  Gasoline tax, §27-55-5.
  Special fuel tax, §27-55-505.
Fuel.
  Interstate commercial carriers motor fuel tax, §27-61-3.
Fuel oil.
  Special fuel tax, §27-55-505.
Funding action.
  Accountability and transparency act, §27-104-153.
Funding source.
  Accountability and transparency act, §27-104-153.
Gaming license.
  Cruise vessels, §27-109-1.
Gasoline.
  Gasoline tax, §27-55-5.
Gasoline, diesel fuel or kerosene taxes.
  Sales tax, §27-65-75.
General-fund agency, §27-103-103.
Gross income.
  Sales tax, §27-65-3.
Gross proceeds of sale.
  Sales tax, §27-65-3.
Highway.
  Gasoline tax, §27-55-5.
  Interstate commercial carriers motor fuel tax, §27-61-3.
  Liquefied compressed gas tax, §27-59-3.

DEFINED TERMS —Cont'd
Highway —Cont'd
  Special fuel tax, §27-55-505.
Home medical supplies.
  Sales tax exemptions, §27-65-111.
Home service provider.
  Sales tax, telecommunications providers, §27-65-19.
Hotel.
  Special sales tax by municipalities of 150,000 or more, §27-65-241.
Hunting supplies.
  Sales tax exemptions for firearms and ammunition sold during Second Amendment weekend tax holiday, §27-65-111.
IFTA license.
  Appellate review of department of revenue actions, §27-77-1.
IFTA licensee.
  Appellate review of department of revenue actions, §27-77-1.
Industrial purposes.
  Liquefied compressed gas tax, §27-59-303.
Installation charges.
  Sales tax, §27-65-3.
Intangible assets.
  Depositories for state funds, §27-105-5.
  Local governments' depositories, §27-105-315.
Investment.
  Iran divestment act of 2015, §27-106-5.
Iran.
  Iran divestment act of 2015, §27-106-5.
IRP credentials.
  Appellate review of department of revenue actions, §27-77-1.
IRP registrant.
  Appellate review of department of revenue actions, §27-77-1.
IRP registration.
  Appellate review of department of revenue actions, §27-77-1.
Jobber.
  Sales tax, §27-65-5.
Last known address.
  Appellate review of department of revenue actions, §27-77-1.
Leases.
  Use tax, §27-67-3.
Light wine and beer, §27-71-301.
Limitation of actions.
  Tax refunds, §27-73-5.

DEFINED TERMS —Cont'd
Liquefied compressed gas, §27-59-3.
Liquefied natural gas, §27-59-3.
Locomotive fuel.
  Liquefied compressed gas tax, §27-59-303.
Lubricating oil, §27-57-5.
Machine parts.
  Sales tax, §27-65-11.
Mail.
  Appellate review of department of revenue actions, §27-77-1.
  Nonsettling manufacturer cigarettes, §27-70-3.
Mailed.
  Appellate review of department of revenue actions, §27-77-1.
Mailing.
  Appellate review of department of revenue actions, §27-77-1.
Mail order sale.
  Use tax, §27-67-4.
Mandatory convertible debt.
  Depositories for state funds, §27-105-5.
  Local governments' depositories, §27-105-315.
Manufacturer.
  Light wine and beer tax, §27-71-301.
  Liquefied compressed gas tax.
    User tax, §27-59-303.
  Nonsettling manufacturer cigarettes, §27-70-3.
  Sales tax, §27-65-11.
Manufacturer's list price.
  Tobacco tax, §27-69-3.
Manufacturing.
  Sales tax, §27-65-11.
Manufacturing machinery.
  Sales tax, §27-65-11.
Manufacturing plant.
  Sales tax, §27-65-11.
Marine dealer.
  Special fuel tax, §27-55-505.
Master settlement agreement.
  Nonsettling manufacturer cigarettes, §27-70-3.
Material purchase certificate.
  Sales tax, §27-65-3.
Medicines.
  Sales tax, §27-65-111.
Mines and minerals.
  Tax refunds, §27-73-13.
Mobile telecommunications service.
  Sales tax, telecommunications providers, §27-65-19.

DEFINED TERMS —Cont'd
Mortgage servicing rights.
  Depositories for state funds, §27-105-5.
  Local governments' depositories, §27-105-315.
Motel.
  Special sales tax by municipalities of 150,000 or more, §27-65-241.
Motor.
  Liquefied compressed gas tax.
    User tax, §27-59-303.
Motor carrier.
  Interstate commercial carriers motor fuel tax, §27-61-3.
Motor vehicle.
  Interstate commercial carriers motor fuel tax, §27-61-3.
  Liquefied compressed gas tax, §27-59-3.
  Sales tax, §27-65-201.
  Special fuel tax, §27-55-505.
MPC.
  Sales tax, §27-65-3.
Natural gas.
  Liquefied compressed gas tax, §27-59-303.
Navigable waters.
  Cruise vessels, §27-109-1.
Newspaper.
  Sales tax, §27-65-3.
Nonsettling manufacturer.
  Nonsettling-manufacturer cigarettes, §27-70-3.
Nonsettling-manufacturer cigarettes, §27-70-3.
Nonsettling-manufacturer cigarette tobacco products, §27-70-3.
Oil.
  Tax refunds, §27-73-13.
Operator.
  Interstate commercial carriers motor fuel tax, §27-61-3.
  Sales tax.
    Oil and gas well contracting, §27-65-21.
Other programs and activities.
  Performance budgeting and strategic planning, §27-103-159.
Out-of-state business.
  Facilitating business rapid response to state declared disasters, §27-113-5.
Out-of-state employee.
  Facilitating business rapid response to state declared disasters, §27-113-5.

DEFINED TERMS —Cont'd
Owner.
  Interstate commercial carriers motor fuel tax, §27-61-3.
Permanent use.
  Sales tax, §27-65-26.
Permit.
  Appellate review of department of revenue actions, §27-77-1.
Permittee.
  Appellate review of department of revenue actions, §27-77-1.
  Liquefied compressed gas tax.
    User tax, §27-59-303.
Perpetual preferred stock.
  Depositories for state funds, §27-105-5.
  Local governments' depositories, §27-105-315.
Person.
  Appellate review of department of revenue actions, §27-77-1.
  Gasoline tax, §27-55-5.
  Interstate commercial carriers motor fuel tax, §27-61-3.
  Iran divestment act of 2015, §27-106-5.
  Light wine and beer tax, §27-71-301.
  Liquefied compressed gas tax, §27-59-3.
  Lubricating oil tax, §27-57-5.
  Sales and use tax administration law, §27-68-3.
  Salesmen's tax, §27-67-503.
  Sales tax, §27-65-3.
  Special fuel tax, §27-55-505.
  Tobacco tax, §27-69-3.
  Use tax, §§27-59-303, 27-67-3.
Person doing business in this state.
  Use tax, §27-67-3.
Place of primary use.
  Sales tax, telecommunications providers, §27-65-19.
Pollution control equipment.
  Sales tax exemptions, §27-65-101.
Postpaid calling service.
  Sales tax, telecommunications providers, §27-65-19.
Prepaid calling service.
  Sales tax, telecommunications providers, §27-65-19.
Prepaid wireless calling service.
  Sales tax, telecommunications providers, §27-65-19.
Primary capital.
  Depositories for state funds, §27-105-5.

DEFINED TERMS —Cont'd
Primary capital —Cont'd
  Local governments' depositories, §27-105-315.
Private communication service.
  Sales tax, telecommunications providers, §27-65-19.
Processor.
  Liquefied compressed gas tax, §27-59-3.
  Lubricating oil tax, §27-57-5.
  Special fuel tax, §27-55-505.
Producer.
  Sales tax, §27-65-11.
Program catalogue.
  Performance budgeting and strategic planning, §27-103-159.
Program inventory.
  Performance budgeting and strategic planning, §27-103-159.
Promising practices.
  Performance budgeting and strategic planning, §27-103-159.
Public utility.
  Liquefied compressed gas tax, §27-59-3.
Purchase.
  Salesmen's tax, §27-67-503.
  Use tax, §27-67-3.
Purchase price.
  Salesmen's tax, §27-67-503.
  Use tax, §27-67-3.
Racing gasoline.
  Gasoline tax, §27-55-5.
Recipient.
  Accountability and transparency act, §27-104-153.
Recreational vehicle.
  Interstate commercial carriers motor fuel tax, §27-61-3.
Refiner.
  Gasoline tax, §27-55-5.
  Liquefied compressed gas tax, §27-59-3.
  Lubricating oil tax, §27-57-5.
  Special fuel tax, §27-55-505.
Refinery.
  Sales tax, §27-65-24.
Refund claim.
  Appellate review of department of revenue actions, §27-77-1.
Refund gasoline.
  Gasoline tax, §27-55-5.
Registered business.
  Facilitating business rapid response to state declared disasters, §27-113-5.

DEFINED TERMS —Cont'd
Registered business in the state.
  Facilitating business rapid response to state declared disasters, §27-113-5.
Remanufacturing.
  Sales tax, §27-65-11.
Rent.
  Use tax, §27-67-3.
Repair and replacement.
  Sales tax, §27-65-11.
Research-based program.
  Performance budgeting and strategic planning, §27-103-159.
Reservation lands.
  Choctaw Indian tribal tax, §27-65-211.
Resident.
  Appellate review of department of revenue actions, §27-77-1.
Restaurant.
  Special sales tax by municipalities of 150,000 or more, §27-65-241.
Retail dealer.
  Interstate commercial carriers motor fuel tax, §27-61-3.
  Special fuel tax, §27-55-505.
Retailer.
  Light wine and beer tax, §27-71-301.
  Lubricating oil tax, §27-57-5.
  Sales tax, §27-65-7.
  Tobacco tax, §27-69-3.
Retail sale.
  Sales tax, §27-65-7.
Revenue maximization contract.
  Budgets, §27-104-81.
Sales.
  Light wine and beer tax, §27-71-301.
  Salesmen's tax, §27-67-503.
  Sales tax, §27-65-3.
  Tobacco tax, §27-69-3.
  Use tax, §27-67-3.
Salesmen.
  Salesmen's tax, §27-67-503.
Sales price.
  Salesmen's tax, §27-67-503.
  Use tax, §27-67-3.
Sales tax.
  Sales and use tax administration law, §27-68-3.
Searchable web site.
  Accountability and transparency act, §27-104-153.
Seller.
  Sales and use tax administration law, §27-68-3.

DEFINED TERMS —Cont'd
Service address.
  Sales tax, telecommunications providers, §27-65-19.
Small craft brewery.
  Light wine and beer tax, §27-71-301.
Special fuel, §27-55-505.
Special-fund agency, §27-103-103.
Special funds, §27-103-103.
Specified digital products.
  Sales tax, §27-65-26.
  Use tax, §27-67-3.
Stamp.
  Tobacco tax, §27-69-3.
State.
  Sales and use tax administration law, §27-68-3.
  Tobacco tax, §27-69-3.
State agency.
  Budgets, §27-103-103.
State audit or report.
  Accountability and transparency act, §27-104-153.
State general-fund agency, §27-103-103.
State-source special funds.
  Department of transportation, §27-104-13.
State special-fund agency, §27-103-103.
Statute of limitations.
  Tax refunds, §27-73-5.
Storage.
  Use tax, §27-67-3.
Tag.
  Appellate review of department of revenue actions, §27-77-1.
Tag holder.
  Appellate review of department of revenue actions, §27-77-1.
Tag penalty.
  Appellate review of department of revenue actions, §27-77-1.
Tangible personal property.
  Salesmen's tax, §27-67-503.
  Sales tax, §27-65-3.
  Use tax, §27-67-3.
Taxes.
  Appellate review of department of revenue actions, §27-77-1.
  Tax reciprocity law, §27-75-3.
Taxing entity.
  Reports of taxing entities, §27-101-21.
Taxpayer.
  Appellate review of department of revenue actions, §27-77-1.

DEFINED TERMS —Cont'd
Taxpayer —Cont'd
  Salesmen's tax, §27-67-503.
  Sales tax, §27-65-3.
  Use tax, §27-67-3.
Tax revenue.
  Reports of taxing entities, §27-101-21.
Tax year.
  Sales tax, §27-65-3.
Telecommunications enterprises.
  Sales tax exemption.
    Businesses in tier two and tier one areas, §27-65-101.
Terminal.
  Liquefied compressed gas tax, §27-59-3.
  Special fuel tax, §27-55-505.
Terminal operator.
  Special fuel tax, §27-55-505.
Tier one areas.
  Sales tax exemption, §27-65-101.
Tier two areas.
  Sales tax exemption, §27-65-101.
Tier three areas.
  Sales tax exemption, §27-65-101.
Title.
  Appellate review of department of revenue actions, §27-77-1.
Title interest holder.
  Appellate review of revenue actions, §27-77-1.
Tobacco.
  Tobacco tax, §27-69-3.
Tobacco settlement agreement.
  Nonsettling manufacturer cigarettes, §27-70-3.
Total assets.
  Depositories for state funds, §27-105-5.
  Local governments' depositories, §27-105-315.
Total contract price or compensation received.
  Sales tax, §§27-65-21, 27-65-24.
Transient vendor.
  Tobacco tax, §27-69-3.
Tribal tax.
  Choctaw Indians, §27-65-211.
Turnkey drilling contract.
  Sales tax, §27-65-21.
Undyed diesel fuel.
  Special fuel tax, §27-55-505.
Unencumbered cash balance.
  Budget reform act, §27-103-213.
United States government.
  Gasoline tax, §27-55-5.

DEFINED TERMS —Cont'd
United States government —Cont'd
  Liquefied compressed gas tax, §27-59-3.
  Special fuel tax, §27-55-505.
Use.
  Liquefied compressed gas tax, §27-59-3.
  Use tax, §27-67-3.
User.
  Liquefied compressed gas tax, §27-59-3.
Use tax.
  Sales and use tax administration law, §27-68-3.
Value.
  Use tax, §27-67-3.
Vessel.
  Cruise vessels, §27-109-1.
Waters or waters in the state.
  Lubricating oil tax, §27-57-5.
Wholesaler.
  Light wine and beer tax, §27-71-301.
  Sales tax, §27-65-5.
  Tobacco tax, §27-69-3.
Wholesale sales.
  Sales tax, §27-65-5.

DEPARTMENT OF FINANCE AND ADMINISTRATION.
General provisions, §§27-104-1 to 27-104-109.

DEPOSITORIES.
Local governments, §§27-105-301 to 27-105-371.
Special fuel tax.
  Funds placed in depositories, §27-55-555.

DEVELOPMENT AUTHORITY.
Negotiations involving economic development projects.
  Annual report of tax credits, loans, rebates and grants resulting from.
    Sales tax information to be provided, §27-65-81.
Reports.
  Negotiations involving economic development projects.
    Annual report of tax credits, loans, rebates and grants resulting from.
      Sales tax information to be provided, §27-65-81.

DEVELOPMENT AUTHORITY —Cont'd
Sales tax returns and information.
  Negotiations involving economic development projects.
    Annual report of tax credits, loans, rebates and grants resulting from.
      Sales tax information to be provided, §27-65-81.
  Release of certain information.
    Execution of confidentiality agreement, §27-65-81.
Tourism industry sales tax exemption for guided tours on navigable waters of state, §§27-65-22, 27-65-101.

DIABETES.
Sales tax exemption.
  Sales to diabetes organizations, §27-65-111.

DIESEL FUEL.
Interstate commercial carriers motor fuel tax.
  General provisions, §§27-61-1 to 27-61-33.
Special fuel tax.
  General provisions, §§27-55-501 to 27-55-569.

DIGITAL AUDIO-VISUAL WORKS.
Defined, §27-65-26.
Sales tax.
  Sale, rental, lease of specified digital products, §27-65-26.
Use tax.
  Generally, §§27-67-1 to 27-67-33.
  Levy and collection, §27-67-5.
  Mail order sales, §27-67-4.

DIGITAL AUDIO WORKS.
Defined, §27-65-26.
Sales tax.
  Sale, rental, lease of specified digital products, §27-65-26.
Use tax.
  Generally, §§27-67-1 to 27-67-33.
  Levy and collection, §27-67-5.
  Mail order sales, §27-67-4.

DIGITAL BOOKS.
Defined, §27-65-26.
Sales tax.
  Sale, rental, lease of specified digital products, §27-65-26.
Use tax.
  Generally, §§27-67-1 to 27-67-33.

DIGITAL BOOKS —Cont'd
Use tax —Cont'd
  Levy and collection, §27-67-5.
  Mail order sales, §27-67-4.

DISASTER RELIEF.
Excessive rains and floods of Spring of 1975.
  Commission of budget and accounting.
    Administrator of certain emergency appropriations, §27-107-113.
  Evacuation of endangered persons.
    Expenditure of public funds and utilization of public equipment and facilities for, §27-107-127.
  Federal funds for restoration purposes.
    Utilization of appropriated funds to assist local governing authorities to obtain, §27-107-111.
  Loans.
    Loans to counties and municipalities, §§27-107-115, 27-107-117, 27-107-121.
  Private property protection.
    Expenditure of public funds and utilization of public equipment and facilities for, §27-107-127.
  Records.
    County and municipal authorities, §27-107-119.
  Rules and regulations, §27-107-125.
  State bond commission.
    Powers, §27-107-123.
Facilitating business rapid response to state declared disasters, §§27-113-1 to 27-113-9.
Federal disaster relief act of 1970.
  Authority to accept and disburse funds, §27-107-31.
Flooding disaster of 1973, §§27-107-71 to 27-107-85.
  Commission of budget and accounting.
    Administrator of certain emergency appropriations, §27-107-73.
  Federal funds for restoration purposes.
    Utilization of appropriated funds to assist local governing authorities to obtain, §27-107-71.
  Loans.
    Loans to counties and municipalities, §§27-107-75, 27-107-77, 27-107-81.
  Records.
    County and municipal authorities, §27-107-79.

DISASTER RELIEF —Cont'd
Flooding disaster of 1973 —Cont'd
  Rules and regulations, §27-107-85.
  State bond commission.
    Powers, §27-107-83.
Flooding disaster of 1979, §§27-107-153 to 27-107-189.
  Allocations to agencies with depleted funds, §§27-107-169 to 27-107-189.
    Administrator of appropriations, §27-107-171.
    Appropriated funds to assist agencies.
      Utilization, §27-107-169.
    Audit of claims, §27-107-179.
    Borrowing money, authority, §27-107-187.
    Certification that expenditures and losses reimbursable, §27-107-181.
    Documenting requests, §27-107-179.
    Official minutes of state agency governing board and application forms.
      Copies, §27-107-175.
    Rules and regulations, adoption, §27-107-189.
    State disaster emergency fund.
      Established, payments from, §27-107-173.
    Time limit on applications, §27-107-183.
    Total expenditures, §27-107-185.
    Use of funds, §27-107-177.
  Commission of budget and accounting.
    Administrator of certain emergency appropriations, §§27-107-155, 27-107-171.
  Federal funds for restoration purposes.
    Utilization of appropriated funds to assist local governing authorities to obtain, §27-107-153.
  Loans, §27-107-165.
    Loans to counties and municipalities, §§27-107-157, 27-107-159.
  Records.
    Counties and municipalities, §27-107-161.
  Rules and regulations, §27-107-167.
    Allocations to agencies with depleted funds, §27-107-189.
  State bond commission.
    Authority to borrow, §§27-107-165, 27-107-187.

DISASTER RELIEF —Cont'd
Flooding disaster of 1979 —Cont'd
  Total authorized expenditure of appropriated state funds, §27-107-185.
  Total expenditure of appropriated state funds, §27-107-163.
Hurricane disaster of 1969, §§27-107-1 to 27-107-15.
  Commissioner of budget and accounting.
    Administrator of certain emergency appropriations, §27-107-3.
  Federal funds for restoration purposes.
    Utilization of appropriated funds to assist local governing authorities to obtain, §27-107-1.
  Loans.
    Loans to counties and municipalities, §§27-107-5, 27-107-7, 27-107-11.
  Records.
    County and municipal authorities, §27-107-9.
  Rules and regulations, §27-107-15.
  State bond commission.
    Powers, §27-107-13.
Interstate earthquake emergency compact, §27-107-301.
Jones county tornado disaster of February, 1987, §§27-107-201 to 27-107-207.
  Authorization to utilize certain funds, §27-107-203.
  Loans.
    Loans to counties, municipalities and school districts, §§27-107-201, 27-107-205.
  Rules and regulations, §27-107-207.
Loans.
  Excessive rains and floods of Spring of 1975.
    Loans to counties and municipalities, §§27-107-115, 27-107-117, 27-107-121.
  Flooding disaster of 1973.
    Loans to counties and municipalities, §§27-107-75, 27-107-77, 27-107-81.
  Flooding disaster of 1979, §27-107-165.
    Loans to counties and municipalities, §§27-107-157, 27-107-159.
  Hurricane disaster of 1969.
    Loans to counties and municipalities, §§27-107-5, 27-107-7, 27-107-11.

DISASTER RELIEF —Cont'd
Loans —Cont'd
  Jones county tornado disaster of February 1987.
    Loans to counties, municipalities and school districts, §§27-107-201, 27-107-205.
  Tornado, rain and flooding disaster of 1975.
    Loans to counties and municipalities, §§27-107-95, 27-107-97, 27-107-101.
  Tornado disaster of 1971, §§27-107-55, 27-107-59.
  Tornado disaster of March 12, 1975.
    Loans to counties and municipalities, §§27-107-135, 27-107-137, 27-107-141.
Records.
  Excessive rains and floods of Spring of 1975.
    County and municipal authorities, §27-107-119.
  Flooding disaster of 1973.
    County and municipal authorities, §27-107-79.
  Flooding disaster of 1979.
    Counties and municipalities, §27-107-161.
  Hurricane disaster of 1969.
    County and municipal authorities, §27-107-9.
  Tornado, rain and flooding disaster of 1975.
    County and municipal authorities, §27-107-99.
  Tornado disaster of 1971.
    Counties and municipalities, §27-107-57.
  Tornado disaster of March 12, 1975.
    County and municipal authorities, §27-107-139.
Tornado, rain and flooding disaster of 1975, §§27-107-91 to 27-107-105.
  Commission of budget and accounting.
    Administrator of certain emergency appropriations, §27-107-93.
  Excessive rains and floods of Spring of 1975, §§27-107-111 to 27-107-127.
  Federal funds for restoration purposes.
    Utilization of appropriated funds to assist local governing authorities to obtain, §27-107-91.

DISASTER RELIEF —Cont'd

Tornado, rain and flooding disaster of 1975 —Cont'd
- Loans.
  - Loans to counties and municipalities, §§27-107-95, 27-107-97, 27-107-101.
- Records.
  - County and municipal authorities, §27-107-99.
- Rules and regulations, §27-107-105.
- State bond commission.
  - Powers, §27-107-103.

Tornado disaster of 1971, §§27-107-51 to 27-107-61.
- Commission of budget and accounting.
  - Administration of appropriations, §27-107-53.
- Federal funds.
  - Utilization of appropriated funds to assist local governing authorities to obtain, §27-107-51.
- Loans, §§27-107-55, 27-107-59.
- Records.
  - Counties and municipalities, §27-107-57.
- State bond commission.
  - Authority, §27-107-61.

Tornado disaster of March 12, 1975, §§27-107-131 to 27-107-145.
- Commission of budget and accounting.
  - Administrator of certain emergency appropriations, §27-107-133.
- Federal funds for restoration purposes.
  - Utilization of appropriated funds to assist local governing authorities to obtain, §27-107-131.
- Loans.
  - Loans to counties and municipalities, §§27-107-135, 27-107-137, 27-107-141.
- Records.
  - County and municipal authorities, §27-107-139.
- Rules and regulations, §27-107-145.
- State bond commission.
  - Powers, §27-107-143.

DISASTERS.

Emergency aid to local governments loan and grant program, §27-107-321.

DISASTERS —Cont'd

Facilitating business rapid response to state declared disasters, §§27-113-1 to 27-113-9.
- Definitions, §27-113-5.
- Legislative findings, §27-113-3.
- Out-of-state businesses conducting operations in state related to declared disaster.
  - Exemptions from certain tax and licensing provisions, §27-113-7.
  - Notice to department of revenue, §27-113-9.
- Sales tax exemptions, §§27-65-101, 27-65-107, 27-65-111.
- Title of provisions, §27-113-1.

Flooding disaster of 1973.
- Disaster relief, §§27-107-71 to 27-107-85.

Flooding disaster of 1979.
- Disaster relief, §§27-107-153 to 27-107-189.

Hurricane disaster of 1969.
- Disaster relief, §§27-107-1 to 27-107-15.

Jones county tornado disaster of February, 1987.
- Disaster relief, §§27-107-201 to 27-107-207.

Tornado, rain and flooding disaster of 1975.
- Disaster relief, §§27-107-91 to 27-107-105.

Tornado disaster of 1971.
- Disaster relief, §§27-107-51 to 27-107-61.

Tornado disaster of March 12, 1975.
- Disaster relief, §§27-107-131 to 27-107-145.

DISCIPLINARY ACTIONS.

Tobacco permits.
- Revocation, §§27-69-9, 27-69-37.

DRAINAGE DISTRICTS.

County depositories.
- Deposit of drainage district funds in, §27-105-351.

Taxing entities, reports, §27-101-21.

DRUGS AND CONTROLLED SUBSTANCES.

Sales tax.
- Exemptions, §27-65-111.

DURABLE MEDICAL EQUIPMENT.
Home medical equipment.
  Sales tax exemptions.
    Sale under social security, §27-65-105.
Sales tax.
  Exemptions, §27-65-111.

DURESS.
Tax refunds.
  Withdrawal of consent to, and abatement of, suits for refund of tax on mineral interests, etc., §27-73-13.

E

EARTHQUAKES.
Disaster relief.
  General provisions, §§27-107-1 to 27-107-321.
Interstate earthquake emergency compact, §27-107-301.

ECONOMIC DEVELOPMENT PROGRAMS AND TAX INCENTIVES EVALUATION ACT OF 2014.
Tax return information to be provided to university research center.
  Sales tax, §27-65-81.

ECONOMIC DEVELOPMENT REFORM ACT.
Sales tax exemption.
  Businesses in tier two and tier one areas, §27-65-101.

ECONOMIC REDEVELOPMENT ACT.
Sales tax revenue.
  Distribution of gross proceeds on sales of businesses located within redevelopment project, §27-65-75.

ELECTRICITY DISTRIBUTORS.
Sales tax.
  Levy on public utilities, §27-65-19.

ELECTRIC POWER.
Electricity distributors.
  Sales tax.
    Levy on public utilities, §27-65-19.

EMERGENCIES.
Facilitating business rapid response to state declared disasters, §§27-113-1 to 27-113-9.

EMERGENCIES —Cont'd
Interstate commercial carriers motor fuel tax.
  Wavier of taxes and fees when vehicle operated in response to emergency, §27-61-8.

EMERGENCY AID TO LOCAL GOVERNMENTS LOAN AND GRANT PROGRAM, §27-107-321.

EMERGENCY MANAGEMENT.
Disaster relief.
  General provisions, §§27-107-1 to 27-107-321.

ENDOWMENT FUNDS.
Budgets.
  Applicability of budget procedures, §27-103-105.

ETHANE.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.

ETHYLENE.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.

EVACUATION.
Disaster relief.
  Flood of 1975, §27-107-127.
  General provisions, §§27-107-1 to 27-107-321.

EVIDENCE.
Special fuel tax.
  Exemptions, §27-55-527.
  Product transported, §27-55-559.
  Sales by distributors, §27-55-545.

EXCISE TAXES.
Reciprocal collection of taxes, §§27-75-1 to 27-75-17.
Sales tax.
  General provisions, §§27-65-1 to 27-65-231.
Tax refunds, §§27-73-1 to 27-73-13.
Use tax.
  General provisions, §§27-67-1 to 27-67-33.

EXECUTION OF JUDGMENTS.
Sales tax.
  Alias executions, §27-65-67.
  Damages in consequence of seizure and sale of property.
    Sheriff and special agent not personally liable, §27-65-69.

EXECUTION OF JUDGMENTS —Cont'd
Sales tax —Cont'd
  Judgment for taxes as basis for issuance of writ of execution, §27-65-57.
  Sale under authority of writ of execution.
    Commissioner may bid at sales, §27-65-65.

EXPENDITURE OF STATE FUNDS.
Website, §§27-104-151 to 27-104-167.
  Board of trustees of state institutions of higher learning.
    IHL accountability and transparency website, §27-104-155.
  Community and junior colleges accountability and transparency website, §27-104-155.
  Community hospital accountability and transparency website, §27-104-155.
  Compliance examination.
    State auditor, §27-104-158.
  Contents, §27-104-155.
  Date for all fiscal years included, §27-104-155.
  Definitions, §27-104-153.
  Development and operation.
    Department of finance and administration, §27-104-155.
  Disbursement information, §27-104-155.
  Electronic summary of grants, §27-104-155.
  IHL accountability and transparency website, §27-104-155.
  Legislative branch expenditures.
    No authority to review, approve or deny, §27-104-161.
    Provisions applicable, §27-104-159.
  Legislative findings and intent, §27-104-152.
  Meetings of state agencies.
    Publication on searchable website, §27-104-163.
  Mississippi accountability and transparency act.
    Short title, §27-104-151.
  Phased-in plan for implementation of procurement portal, §27-104-165.
  Proprietary information not disclosed, §27-104-155.
  Public records act not superseded, §27-104-159.
  Report of information by state agencies.
    Form and timeline, §27-104-157.
    Publication on searchable website, §27-104-167.
  Searchable web site, §27-104-155.
    Defined, §27-104-153.
  Time period for updating information, §27-104-155.
  Trade secrets not disclosed, §27-104-155.

F

FACTORY-BUILT HOMES.
Sales and use tax.
  Sales tax on factory built components, §27-65-17.
    Disclosure of amount to buyers.
      Sellers' duty, §27-65-17.1.

FARMERS' MARKETS.
Sales tax exemption.
  Sales of state grown, made or processed products, §27-65-103.

FARM IMPLEMENTS.
Sales tax.
  Rate of tax on retail sales, §27-65-17.

FARMS AND FARMING.
Sales tax.
  Rate.
    Retail sale of farm tractors and farm implements, §27-65-17.

FARM VEHICLES, TRACTORS OR IMPLEMENTS OF HUSBANDRY.
Sales tax.
  Rate of tax on retail sales, §27-65-17.

FEES.
Cruise vessels.
  Privilege licenses, §27-109-11.
Liquefied compressed gas tax.
  Compressed gas users decal for motor vehicles, §27-59-29.
Sales tax.
  Warrant for collection.
    Execution by sheriff or special agent, §27-65-63.

FINANCE AND ADMINISTRATION DEPARTMENT, §§27-104-1 to 27-104-109.
Accountability and transparency act.
  Information regarding expenditure of state funds and bond proceeds.
    Website, §§27-104-151 to 27-104-167.
Affordable Care Act, duties relating to, §27-104-3.
Appropriations.
  Reductions or revisions of budget estimates.
    Power to rescind or restore, §27-104-14.
Bonds, surety.
  Executive director, §27-104-5.
Collections.
  Assistance to state agencies with, §27-104-3.
Creation, §27-104-101.
Credit card or other electronic payment method.
  Policies to be established, §27-104-33.
Duties, §§27-104-3, 27-104-103.
  Federal funds.
    Applications for, §27-104-21.
  Study of creation, abolition or consolidation of agencies and departments, §27-104-1.
Electronic payment.
  Policies to be established, §27-104-33.
Executive director.
  State fiscal officer.
    Executive director to be, §27-104-6.
Expenditures of state funds and bond proceeds.
  Website, §§27-104-151 to 27-104-167.
    Compliance examination.
      State auditor, §27-104-158.
    Contents, §27-104-155.
    Definitions, §27-104-153.
    Duty to develop and operate, §27-104-155.
    Legislative branch expenditures.
      No authority to review, approve or deny, §27-104-161.
      Provisions applicable, §27-104-159.
    Legislative findings and intent, §27-104-152.
    Meetings of state agencies.
      Publication on searchable website, §27-104-163.
    Mississippi accountability and transparency act.
      Short title, §27-104-151.

FINANCE AND ADMINISTRATION DEPARTMENT —Cont'd
Expenditures of state funds and bond proceeds —Cont'd
  Website —Cont'd
    Phased-in plan for implementation of procurement portal, §27-104-165.
    Proprietary information not disclosed, §27-104-155.
    Public records act not superseded, §27-104-159.
    Report of information by state agencies.
      Form and timeline, §27-104-157.
      Publication on searchable website, §27-104-167.
    Searchable web site, §27-104-155.
Iran divestment act of 2015.
  Duties of executive officer of department, §27-106-9.
Leases.
  Real property, §27-104-107.
Legal services.
  Prior clearance by attorney general and state personnel board required for payment of certain claims for, §27-104-105.
Mississippi accountability and transparency act.
  Information regarding expenditure of state funds and bond proceeds.
    Website, §§27-104-151 to 27-104-167.
Organization, §27-104-101.
Powers, §§27-104-3, 27-104-103.
Public purchasing.
  Public procurement review board, §27-104-7.
Real property.
  Lease, sublease, or lease, purchase, §27-104-107.
Recycled materials.
  Report.
    State based companies manufacturing products using, §27-104-109.
Reports.
  Agencies to file reports with department, §27-104-1.
  Recycled materials.
    State based companies manufacturing products using, §27-104-109.
State fiscal management board.
  Department as, §27-104-1.

FINANCE AND ADMINISTRATION DEPARTMENT —Cont'd
Website.
- Expenditures of state funds and bond proceeds, §§27-104-151 to 27-104-167.
  - Contents, §27-104-155.
  - Definitions, §27-104-153.
  - Duty to develop and operate, §27-104-155.
  - Legislative branch expenditures.
    - No authority to review, approve, deny, §27-104-161.
    - Provisions applicable, §27-104-159.
  - Legislative findings and intent, §27-104-152.
  - Meetings of state agencies.
    - Publication on searchable website, §27-104-163.
  - Mississippi accountability and transparency act.
    - Short title, §27-104-151.
  - Phased-in plan for implementation of procurement portal, §27-104-165.
  - Proprietary information not disclosed, §27-104-155.
  - Public records act not superseded, §27-104-159.
  - Report of information by state agencies.
    - Form and timeline, §27-104-157.
    - Publication on searchable website, §27-104-167.
  - Searchable web site, §27-104-155.

FINES.
Alcoholic beverage taxes, §§27-71-5, 27-71-23.
- Breweries, §27-71-511.
- Counterfeiting or reuse of labels, §27-71-17.
- Light wine and beer, §27-71-347.
  - Reuse of stamps, §27-71-313.

County depositories, §§27-105-345, 27-105-347.
Cruise vessels.
- Privilege licenses, §27-109-13.

Depositories for state funds.
- Failure to perform duties, §27-105-29.
- Loan or removal of state funds, §27-105-27.

Gasoline tax.
- Diversion of gasoline shipment, §27-55-53.

FINES —Cont'd
Gasoline tax —Cont'd
- Metering requirements, §27-55-35.
- Seals on vessels, §27-55-33.
- Shipping documentation violations, §27-55-53.
- Unloading taxable petroleum products, §27-55-33.

Interstate commercial carriers motor fuel tax, §27-61-21.
Local governments' depositories.
- County depositories.
  - Obstructing bids, §27-105-313.

Sales tax, §27-65-85.
- Violations of requirements as to collection by seller, §27-65-31.

Special fuel tax.
- Distributor of special fuel.
  - Operating without permit, §27-55-509.
- Diversion of special fuel shipment, §27-55-559.
- Dyed diesel fuel.
  - Use in motor vehicle, §27-55-539.
- Highway construction equipment.
  - Unlawful purchase of untaxed fuel for use in, §27-55-569.
- Inspections.
  - Refusal to allow, §27-55-547.
- Metering requirement violations, §27-55-543.
- Shipping documentation violations, §27-55-559.

Tobacco tax.
- Permits.
  - Engaging in business before permit procured or after permit cancelled, §27-69-7.
- Reuse of stamps, §27-69-47.

FIREARMS AND OTHER WEAPONS.
Sales tax exemptions.
- Firearms and ammunition sold during Second Amendment weekend tax holiday, §27-65-111.

Second Amendment weekend tax holiday.
- Sales tax exemptions for firearms and ammunition sold during, §27-65-111.

FIREFIGHTERS AND FIRE DEPARTMENTS.
Sales tax.
- Exemption of sales of firefighting equipment to fire departments, §27-65-105.

FLOODING DISASTER OF 1973, §§27-107-71 to 27-107-85.

FLOODING DISASTER OF 1979, §§27-107-153 to 27-107-189.

FLOWERS.
Sales tax exemption.
Agricultural products, §27-65-103.

FOOD.
Sales tax exemptions for sale of food to charitable organization for food bank, §27-65-111.

FOOD DONATIONS.
Sales tax exemptions for sale of food to charitable organization for food bank, §27-65-111.

FOOD ESTABLISHMENTS.
Sales tax.
Floating restaurants.
Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.

FOOTWEAR.
Sales tax holiday.
Clothing and footwear, §27-65-111.

FORFEITURES.
Tobacco tax.
Contraband.
Seizure, forfeiture, sale, §§27-69-53, 27-69-55.

FORGERY.
Interstate commercial carriers motor fuel tax.
Invoice, bill of sale, or receipt, §27-61-21.

FOSTER CARE.
Nonprofit organizations providing.
Sales tax exemptions, §27-65-111.
Sales tax exemptions.
Nonprofit organizations providing, §27-65-111.

FRAUD.
Interstate commercial carriers motor fuel tax.
Alteration, change or forgery of invoice, §27-61-21.

FREEDOM OF INFORMATION.
Exemptions.
Taxpayer appeals to board of review and board of tax appeals, §27-77-15.

FREEDOM OF INFORMATION —Cont'd
Taxpayer appeals to board of review and board of tax appeals.
Public records access requirements.
Exemption, §27-77-15.

FREIGHT.
Interstate commercial carriers motor fuel tax.
General provisions, §§27-61-1 to 27-61-33.

FRIENDS OF CHILDREN'S HOSPITAL.
Sales tax exemptions, §27-65-111.

FUEL.
Gasoline tax.
General provisions, §§27-55-1 to 27-55-65.
Interstate commercial carriers motor fuel tax.
General provisions, §§27-61-1 to 27-61-33.
Liquefied compressed gas tax.
General provisions, §§27-59-1 to 27-59-325.
Lubricating oil tax.
General provisions, §§27-57-1 to 27-57-45.
Special fuel tax, §§27-55-501 to 27-55-569.

FURNITURE.
Sales tax.
Business of furniture repairing or upholstering, §27-65-23.

G

GAMBLING.
Gaming license by cruise vessel or vessel.
Privilege licenses generally, §§27-109-1 to 27-109-15.

GAMING LICENSES.
Cruise vessels.
Privilege licenses generally, §§27-109-1 to 27-109-15.

GARDEN CLUBS.
Sales tax on amusements.
Activities exempted, §27-65-22.

GARNISHMENT.
Sales tax.
  Judgment for taxes as basis for issuance of writ of garnishment, §27-65-57.

GAS.
Gasoline tax.
  General provisions, §§27-55-1 to 27-55-65.
Interstate commercial carriers motor fuel tax.
  General provisions, §§27-61-1 to 27-61-33.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.
Lubricating oil tax.
  General provisions, §§27-57-1 to 27-57-45.
Natural gas.
  Liquefied compressed gas tax, §§27-59-1 to 27-59-325.
Special fuel tax, §§27-55-501 to 27-55-569.

GASOLINE TAX, §§27-55-1 to 27-55-65.
Action by state to recover additional amounts.
  Statute of limitations, §27-55-37.
Actions.
  Power to institute proceedings, §27-55-43.
Administration of provisions, §27-55-1.
Armed forces.
  Defined, §27-55-5.
  Exemptions, §27-55-19.
Bonds, surety.
  Permit applications, §27-55-7.
Commission.
  Exchange of information with other states, §27-55-49.
Comptroller.
  Exchange of information with other states, §27-55-49.
  Rules and regulations, §27-55-63.
  Wartime provisions, §27-55-59.
Credit for exemption.
  Person selling or delivering exempted fuel, §27-55-12.
Definitions, §27-55-5.
Depositories.
  Funds collected, §27-55-47.
Distributors of gasoline.
  Defined, §27-55-5.

GASOLINE TAX —Cont'd
Distributors of gasoline —Cont'd
  Monthly report and remittances, §27-55-13.
  Permits, §§27-55-7, 27-55-9.
  Records.
    Retention, §27-55-37.
Erroneously or illegally collected taxes.
  Refund, §27-55-45.
Exemptions, §§27-55-12, 27-55-19.
Export beyond state borders.
  Exemption, §27-55-19.
Imposition of excise tax, §27-55-11.
Injunctions.
  Distributors of gasoline.
    Engaging in business without permit, §27-55-9.
Inspections.
  Rights of commissioner and agents, §27-55-39.
  Vehicle or boat transporting gasoline, §27-55-53.
    Stop at inspection station, §27-55-57.
Institution of proceedings by administrative agency, §27-55-43.
Levy of tax, §27-55-11.
Liens, §27-55-43.
Limitation of actions.
  Recovery by state of additional amounts, §27-55-37.
Lost or destroyed gasoline.
  Refunds, §27-55-27.
Manufactured products.
  Exemption, §27-55-19.
Metering requirements, §27-55-35.
Mixture of fuels on which tax previously paid, §27-55-19.
Non-highway use.
  Refunds, §27-55-23.
Notice.
  Intent to import gasoline, §27-55-53.
Payment, §27-55-11.
  Monthly remittances, §27-55-13.
Penalties.
  Applicable provisions, §27-55-29.
  Transportation of gasoline without giving notice, §27-55-53.
Permits, §§27-55-7, 27-55-9.
Powers of administrative agency, §27-55-29.
  Administration of provisions, §27-55-1.
Prior law.
  Effect, §27-55-65.

GASOLINE TAX —Cont'd
Purpose of provisions, §27-55-3.
Rates, §27-55-11.
Records.
  Retention of records by distributors of gasoline and other persons, §27-55-37.
Refund gasoline, selling, §27-55-21.
Refunds, §27-55-21.
  Definition of refund gasoline, §27-55-5.
  Lost or destroyed gasoline, §27-55-27.
  Non-highway use, §27-55-23.
  Taxes erroneously or illegally collected, §27-55-45.
Reports.
  Monthly report and remittances, §27-55-13.
  Persons not bonded as distributors of gasoline, §27-55-15.
  Transportation reports, §27-55-33.
Right of entry.
  Inspections by commissioner and agents, §27-55-39.
Rules and regulations, §27-55-63.
Sales tax law.
  Applicability of administrative provisions, §27-55-29.
Saving provision.
  Effect of prior law, §27-55-65.
Searches and seizures.
  Delinquent taxes.
    Writ of summons and seizure, §27-55-43.
Sequestration.
  Writ of sequestration, §27-55-43.
Statute of limitations.
  Recovery by state of additional amounts, §27-55-37.
Testing purposes.
  Exemption of fuel used for, §27-55-19.
Transportation.
  Evidence of product transported, §27-55-53.
  Inspections, §27-55-53.
    Stop at inspection station, §27-55-57.
  Reports, §27-55-33.
Unloading taxable petroleum products, §27-55-33.
Vessels.
  Inspection of boat transporting gasoline, §27-55-53.
  Seals on vessels, §27-55-33.
  Unloading taxable petroleum products, §27-55-33.

GASOLINE TAX —Cont'd
War.
  Modifications or alterations of requirements in wartime, §27-55-59.

GIFTS.
Budgets.
  Private gifts not exempt from budget procedures, §27-103-105.

GOLF TOURNAMENTS.
Charitable organization hosting professional golf tournament.
  Sales tax exemption, §§27-65-22, 27-65-101.

GOSPEL MUSIC.
Sales tax on amusements.
  Activities exempted, §27-65-22.

GOVERNOR.
Appropriations.
  Reductions or revisions of budget estimates.
    Power to rescind or restore, §27-104-14.
Budgets.
  Budget officer.
    Employment by governor, §27-103-139.
  Submission of budget, §27-103-139.

GRANTS.
Emergency aid to local governments loan and grant program, §27-107-321.

GUIDED TOURS ON NAVIGABLE WATERS OF STATE.
Sales tax exemptions.
  Amusements, activities exempted, §§27-65-22, 27-65-101.

GYPSIES.
Transient vendors generally.
  Salesmen's tax, §§27-67-501 to 27-67-511.
  Tobacco tax, §§27-69-1 to 27-69-79.

H

HARBORS AND PORTS.
Budgets, §27-103-127.
Sales tax.
  County port authorities.
    Sale of machinery used in operation of structures, facilities and land acquired and operated pursuant to provisions, §27-65-20.

HATTIESBURG ZOO.
Sales of items to, sales tax exemption, §27-65-111.

HAY.
Sales tax exemption.
Agricultural products, §27-65-103.

HEALTH AIDS.
Home medical equipment.
Sales tax exemptions, §27-65-111.
Sale under social security, §27-65-105.

HEALTH CARE INDUSTRY ZONES.
Tax exemptions.
Materials used in construction of buildings.
Sales tax exemptions, §27-65-101.

HEARING AID DEALERS.
Sales tax exemptions, §27-65-111.

HEARINGS.
Taxpayer appeals.
Assessment, refund, tag penalty, §27-77-5.
Chancery court appeals, §27-77-7.
IFTA license.
Application denial, §27-77-11.
Revocation, §27-77-12.
Permit, tag, title.
Application denial, §27-77-11.
Suspension, surrender, seizure, revocation, §27-77-9.

HIGHWAYS, ROADS AND STREETS.
Budgets.
Division of state aid road construction, §27-103-127.
Highway construction and maintenance.
Special fuel tax.
Unlawful purchase of untaxed fuel for use in highway construction equipment, §27-55-569.
Lubricating oil tax.
Construction or reconstruction of highways.
Deposit of tax receipts for, §27-57-37.

HOCKEY.
Sales tax on amusements.
Activities exempted, §27-65-22.

HOME MEDICAL EQUIPMENT.
Sales tax exemptions, §27-65-111.
Sale under social security, §27-65-105.

HONEY AND HONEY PRODUCTS.
Sales tax.
Exemptions, §27-65-103.

HOSPITALS AND OTHER HEALTH CARE FACILITIES.
Accountability and transparency act.
Community hospital accountability and transparency website, §27-104-155.
Local governments' depositories.
County and municipal hospital funds, §27-105-365.
Sales tax.
Exemptions, §27-65-111.

HOTELS AND OTHER LODGING PLACES.
Sales tax, §27-65-23.
Floating hotels.
Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.
Taxes levied under authority of local or private law.
Hotel or motel defined, §27-65-23.1.

HOUSING AUTHORITIES.
Taxing entities, reports, §27-101-21.

HUMAN SERVICES DEPARTMENT.
Fraud.
Investigation unit.
Tax information and returns, disclosures authorized.
Sales tax returns and information, §27-65-81.

HUNTING.
Bow and arrow.
Sales tax exemptions for hunting supplies sold during Second Amendment weekend tax holiday, §27-65-111.
Sales tax exemptions for hunting supplies sold during Second Amendment weekend tax holiday, §27-65-111.

HURRICANES.
Disaster of 1969, §§27-107-1 to 27-107-15.

I

INCOME TAX.
Credits.
  Broadband technology development.
    Telecommunications service providing broadband to colleges and universities.
      Payment credit voucher issued as credit against tax, §27-111-1.
Telecommunications service providing broadband to colleges and universities.
  Payment credit voucher issued as credit against tax, §27-111-1.

INDEMNIFICATION.
Budgets.
  Revenue maximization contracts.
    Federal funds, §27-104-81.
Iran divestment act of 2015.
  Indemnification of officers and employees, §27-106-19.
State departments and agencies.
  Budgets.
    Revenue maximization contracts.
      Federal funds, §27-104-81.

INJUNCTIONS.
Budgets.
  Noncompliance with provisions by agencies, §27-104-29.
Gasoline tax.
  Distributors of gasoline.
    Engaging in business without permit, §27-55-9.
Liquefied compressed gas tax.
  Distributors.
    Engaging in business without permit, §27-59-9.
Lubricating oil tax.
  Distributors.
    Engaging in business without permit, §27-57-9.

INJUNCTIONS —Cont'd
Sales tax.
  Collection of taxes and enforcement of provisions not to be enjoined, §27-65-71.
  Permits to engage in business.
    Violations of requirement, §27-65-27.
Tobacco tax.
  Engaging in business without permit, or failure to report and pay tax, §27-69-61.

INSPECTIONS.
Gasoline tax.
  Rights of commissioner and agents, §27-55-39.
  Vehicle or boat transporting gasoline, §27-55-53.
    Stop at inspection station, §27-55-57.
Liquefied compressed gas tax, §27-59-41.
Lubricating oil tax.
  Rights of commissioner and agent, §27-57-27.
Special fuel tax.
  Powers of commissioner, §27-55-547.

INTEREST.
Depositories for state funds.
  Deposits at interest of certain funds with, §27-105-21.
Disaster relief.
  Loans to counties and municipalities.
    Excessive rains and floods of spring of 1975, §27-107-115.
    Flooding disaster of 1973, §27-107-75.
    Flooding disaster of 1979, §27-107-157.
    Hurricane disaster of 1969, §27-107-5.
    Jones county tornado disaster of February 1987, §27-107-205.
    Tornado, rain and flooding disaster of 1975, §27-107-95.
    Tornado disaster of 1971, §27-107-55.
    Tornado disaster of March 12, 1975, §27-107-135.

INTEREST —Cont'd

Sales tax overpayment.
  Untimely refund or credit, §27-65-53.

INTERNET.

Accountability and transparency act.
  Expenditures of state funds and bond proceeds.
    Website, §§27-104-151 to 27-104-167.

Broadband technology development.
  Telecommunications service providing broadband to colleges and universities.
    Payment credit voucher issued as credit against corporate franchise and income taxes, §27-111-1.

Legislative budget office.
  Online publication of budget requests, §27-103-129.

Telecommunications service providing broadband to colleges and universities.
  Payment credit voucher issued as credit against corporate franchise and income taxes, §27-111-1.

INTERSTATE COMMERCE.

Tobacco tax.
  Dealers in tobacco made subject of interstate sales.
    Provisions not to apply to, §27-69-19.
  Invoices or delivery tickets.
    Requirements while engaged in interstate commerce, §27-69-39.
  Segregation of stock for interstate shipment, §27-69-33.

INTERSTATE COMMERCIAL CARRIERS MOTOR FUEL TAX, §§27-61-1 to 27-61-33.

Administration of provisions, §27-61-1.

Administrative provisions of sales tax law.
  Applicability, §27-61-31.

Bills of sale.
  Fraudulent acts as to bills of sale, §27-61-21.

Commission.
  Determination of tax, §27-61-23.

Compacts or agreements with other states, §27-61-20.

Credits.
  Overpayments, §27-61-13.

INTERSTATE COMMERCIAL CARRIERS MOTOR FUEL TAX —Cont'd

Definitions, §27-61-3.

Determination of tax, §27-61-23.

Distribution of proceeds, §27-61-25.

Emergencies.
  Wavier of taxes and fees when vehicle operated in response to emergency, §27-61-8.

Enforcement, §27-61-1.

Forgery.
  Invoice, bill of sale, or receipt, §27-61-21.

Fraud.
  Alteration, change or forgery of invoice, §27-61-21.

Illegally or erroneously collected taxes.
  Refund, §27-61-33.

Imposition of tax, §27-61-5.

Interest on late payments, §27-61-31.

International fuel tax agreement.
  Applicability, §27-61-9.

Interstate compacts.
  Authorization for agreements with other states, §27-61-20.

Invoices.
  Fraudulent acts as to invoices, §27-61-21.

Late payments, §27-61-31.

Levy of tax, §27-61-5.

Liability for tax.
  Accrual, §27-61-7.

Overpayments.
  Refunds, §27-61-13.

Payment.
  Interest on late payments, §27-61-31.
  Manner of payment, §27-61-7.
  Refund of overpayment, §27-61-13.
  Reports and remittances, §27-61-11.

Penalties, §27-61-21.
  Applicable provisions, §27-61-11.
  Criminal penalties, §27-61-21.

Permits, §27-61-9.
  Distribution of permit fees, §27-61-25.
  Temporary permits, §27-61-29.

Purpose of provisions, §27-61-1.

Rates, §27-61-5.

Reciprocal agreements, §§27-61-21, 27-61-27.

Records, §27-61-15.
  Bulk purchases, §27-61-12.

Refunds.
  Illegally or erroneously collected taxes, §27-61-33.

INTERSTATE COMMERCIAL CARRIERS MOTOR FUEL TAX —Cont'd
Refunds —Cont'd
  Overpayments, §27-61-13.
Reports, §27-61-11.
Rules and regulations, §§27-61-19, 27-61-23.
Temporary permits, §27-61-29.

INTERSTATE COMPACTS.
Earthquakes.
  Interstate earthquake emergency compact, §27-107-301.
Interstate commercial carriers motor fuel tax.
  Authorization for agreements with other states, §27-61-20.

INTERSTATE EARTHQUAKE EMERGENCY COMPACT, §27-107-301.

INVENTORY.
Budgets.
  Performance budgeting and strategic planning.
    Inventory of programs and activities from certain state departments, §27-103-159.

INVESTMENTS.
Excess state funds.
  Duties of state treasurer, §27-105-33.
Hospital funds.
  Depositories for county and municipal hospital funds, §27-105-365.
Iran divestment act of 2015, §§27-106-1 to 27-106-25.
State treasurer.
  Excess state funds, §27-105-33.

INVOICES.
Gasoline tax.
  Evidence of product transported, §27-55-53.
Interstate commercial carriers motor fuel tax.
  Fraudulent acts as to invoices, §27-61-21.
Light wine and beer tax.
  Preservation of invoices, §27-71-325.
  Requirements when transporting, §§27-71-315, 27-71-317.
Lubricating oil tax.
  Evidence of product transported, §27-57-41.

INVOICES —Cont'd
Special fuel tax.
  Evidence of product transported, §27-55-559.
  Evidence of sales, §27-55-545.
  Inspections, §27-55-547.
Tobacco tax.
  Interstate commerce.
    Requirements as to possession of invoices, §27-69-39.
  Preservation of invoices, §27-69-37.
  Records of dealers, §27-69-35.

IRAN DIVESTMENT ACT OF 2015, §§27-106-1 to 27-106-25.
Applicability of provisions, §27-106-21.
Definitions, §27-106-5.
Fiduciary obligations of state, actions not to conflict with, §27-106-17.
Finance and administration department, duties, §§27-106-9, 27-106-11.
Indemnification of officers and employees, §27-106-19.
Legislative findings, §27-106-3.
List of persons engaged in investment activities in Iran, §27-106-9.
Notice to attorney general describing provisions, §27-106-23.
Persons engaged in investments, §27-106-7.
Reports, §27-106-11.
Retirement system investments, limitations, §27-106-13.
  Exception, §27-106-15.
Severability of provisions, §27-106-25.
State treasury investments, limitations, §27-106-13.
  Exception, §27-106-15.
Title of act, §27-106-1.

ISOBUTANE.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.

ITINERANT MERCHANTS.
Salesmen's tax, §§27-67-501 to 27-67-511.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.

J

JACKSON ZOOLOGICAL SOCIETY, INC.
Sales of items to zoological park, sales tax exemption, §27-65-111.

JET AIRCRAFT ENGINES.
Use tax exemptions.
  Engines used for research and testing, §27-67-7.

JEWELERS.
Sales tax.
  Jewelry or watch repairing, §27-65-23.

JOINT VENTURES.
Sales tax.
  Failure to file return, notice of assessment and damages, §27-65-35.
  Taxes due and unpaid, notice of assessment and damages, §27-65-37.

JONES COUNTY TORNADO DISASTER OF FEBRUARY, 1987, §§27-107-201 to 27-107-207.

JUDGMENTS AND DECREES.
Tax reciprocity law.
  Reciprocal right of other states to enforce judgment, §§27-75-7, 27-75-9.

K

KEEP MISSISSIPPI BEAUTIFUL, INC.
Sales tax exemptions, §27-65-111.

L

LABELS.
Alcoholic beverage taxes.
  Counterfeiting or reuse of labels.
    Criminal penalties, §27-71-17.

LAW ENFORCEMENT OFFICERS.
Tobacco tax.
  Assistance in enforcement, §27-69-67.

LEASES.
Finance and administration department.
  Real property, §27-104-107.

LEGISLATIVE BUDGET OFFICE, §§27-103-101 to 27-103-139.
Budget requests, §27-103-129.

LEGISLATIVE BUDGET OFFICE —Cont'd
Clerical and technical assistants, §27-103-111.
Copies of budget.
  Duties as to, §27-103-137.
Copies of information submitted to.
  Making available to joint legislative committees, §27-103-101.
Director, §27-103-111.
  Duties, §§27-103-117, 27-103-119.
  Visitation of state agencies, §27-103-133.
Federal funds.
  Summary of applications by agencies to be forwarded to office, §27-104-21.
Hearings on budget requirements, §27-103-137.
Justification of purchases in budget requests, §27-103-129.
Multiyear planning requirements, §27-103-114.
Online publication of budget requests, §27-103-129.
Preparation of budget, §27-103-113.
Recommendations and studies as to state agencies, §27-103-115.
Reports to office, §§27-103-107, 27-103-109.

LEGISLATURE.
Emergency aid to local governments grant and loan program.
  Documents to state funds made available by Mississippi legislature, §27-107-321.
Joint legislative budget committee, §§27-103-101 to 27-103-139.
  Compensation, §27-103-101.
  Creation, §27-103-101.
  Daily expense allowance, §27-103-101.
  Meetings, §27-103-101.
  Membership, §27-103-101.
  Mileage, §27-103-101.
  Per diem, §27-103-101.
  Quorum, §27-103-101.
  Recess of legislature.
    Per diem and expenses during, §27-103-101.
  Study and review of state budgeting system, §27-103-209.
Joint legislative committee on performance evaluation and expenditure review.
  Reports, §27-103-209.

LEGISLATURE —Cont'd
Joint legislative committee on performance evaluation and expenditure review —Cont'd
  Review of adequacy of financial statements of state government and fiscal control systems, §27-103-209.
Legislative budget office, §§27-103-101 to 27-103-139.

LEVEES AND LEVEE DISTRICTS.
Depositories for funds of local governments.
  Law providing for deposits of and loans by districts not repeal, §27-105-301.
Taxes.
  Alcoholic beverage taxes.
    District not authorized to levee, §27-71-343.
  Refund of taxes erroneously collected, §27-73-1.
  Sales tax.
    Contracting services on levee or levee system, §27-65-21.
    District not authorized to levy, §27-65-73.

LICENSES AND PERMITS.
Alcoholic beverage taxes, §27-71-5.
  Forfeiture for violations, §27-71-23.
  Off-premises retailers permits for common carriers.
    Reporting and payment of tax, §27-71-9.
Cruise vessels.
  Privilege licenses, §§27-109-1 to 27-109-15.
Gasoline tax, §§27-55-7, 27-55-9.
Interstate commercial carriers motor fuel tax, §27-61-9.
  Distribution of permit fees, §27-61-25.
  Temporary permits, §27-61-29.
Liquefied compressed gas tax.
  Distributors, §§27-59-7, 27-59-9.
    Cancellation of permits by comptroller, §27-59-17.
  User's permit, §27-59-305.
Lubricating oil tax.
  Distributors, §§27-57-7, 27-57-9.
Privilege licenses.
  Cruise vessels, §§27-109-1 to 27-109-15.
Sales tax.
  Engaging in business or activity which will subject person to tax, §27-65-27.

LICENSES AND PERMITS —Cont'd
Special fuel tax.
  Distributor of special fuel, §§27-55-507 to 27-55-513.
  Marine diesel fuel or kerosene permit, §27-55-515.
Use tax, §27-67-15.

LICENSE TAGS OR PLATES.
Appeals.
  Appellate review by taxpayers aggrieved by department actions, §§27-77-1 to 27-77-19.

LIENS.
Gasoline tax, §27-55-43.
Light wine and beer tax.
  Penalties.
    Warrant for collection, §27-71-333.
Liquefied compressed gas tax, §27-59-45.
Lubricating oil tax, §27-57-31.
Sales tax, §§27-65-41, 27-65-55.
  Judgment for taxes as lien, §27-65-57.
Special fuel tax, §27-55-551.
Use tax, §27-67-21.

LIGHT WINE AND BEER.
Permits or licenses.
  Appellate review.
    Taxpayers aggrieved by department actions, §§27-77-1 to 27-77-19.
Sales tax.
  Rate.
    Wholesale and retail sale of beer, §27-65-17.
Tax, §§27-71-301 to 27-71-349.
  Additional nature of tax, §27-71-341.
  Bills of lading.
    Requirements while transporting, §§27-71-315, 27-71-317.
  Bonds, surety.
    Manufacturers, wholesalers and brewpubs, §27-71-311.
  Checks.
    Remittances, §27-71-337.
  Criminal penalties, §27-71-347.
    Reuse of stamps, §27-71-313.
  Definitions, §27-71-301.
  Deposit of receipts in state treasury, §27-71-337.
  Excise tax.
    Imposition, §27-71-307.
    Payment, §27-71-303.
  Exclusive nature of tax.
    Other privilege tax not to be levied, §27-71-343.

LIGHT WINE AND BEER —Cont'd
Tax —Cont'd
  General provisions for taxation of alcoholic beverages, §§27-71-1 to 27-71-31.
  Invoices.
    Preservation of invoices, §27-71-325.
    Requirements when transporting, §§27-71-315, 27-71-317.
  License tax.
    Amount, §27-71-303.
    Imposition, §27-71-303.
    Payment, §27-71-305.
  Liens.
    Warrant for collection, §27-71-333.
  Municipalities.
    Levy of privilege tax by municipality, §27-71-345.
  Payment, §27-71-337.
    Excise tax, §27-71-307.
    License tax, §27-71-305.
  Penalties, §27-71-331.
    Assessment and collection, §27-71-333.
    Warrant for collection, §27-71-333.
  Records.
    Examination of records, §27-71-329.
    Manufacturers, distributors, wholesalers, retailers and brewpubs, §27-71-327.
    State auditor to verify books and records, §27-71-339.
  Reports.
    Wholesalers, §27-71-325.
  Sales territories for sale by manufacturers and importers.
    Designation, §27-71-349.
  Searches and seizures.
    Contraband light wine and beer.
      Confiscation, §27-71-335.
  Stamps, §27-71-307.
    Reuse of stamps.
      Criminal penalties, §27-71-313.
  Transportation.
    Requirements, §§27-71-315, 27-71-317, 27-71-349.

LIMITATION OF ACTIONS.
Gasoline tax.
  Recovery by state of additional amounts, §27-55-37.
Liquefied compressed gas tax.
  Recovery by state of additional amounts, §27-59-25.
    User tax, §27-59-315.

LIMITATION OF ACTIONS —Cont'd
Lubricating oil tax.
  Recovery by state of additional amounts, §27-57-25.
Sales tax.
  Collection of taxes due, §27-65-42.
Special fuel tax.
  Actions by state for recovery of additional amounts, §27-55-545.

LIMITED LIABILITY COMPANIES.
Sales tax.
  Failure to file return, notice of assessment and damages, §27-65-35.
  Taxes due and unpaid, notice of assessment and damages, §27-65-37.

LIQUEFIED COMPRESSED GAS TAX, §§27-59-1 to 27-59-325.
Action by state to recover additional amounts.
  Statute of limitations, §27-59-25.
Actions.
  Power to institute proceedings, §27-59-45.
Administration of provisions, §27-59-1.
  Powers, §§27-59-37, 27-59-45.
Apportionment of proceeds, §27-59-49.
Armed forces.
  Defined, §27-59-3.
  Exemptions, §27-59-12.
Bonds, surety.
  Distributor permit applications, §27-59-7.
Commission.
  Exchange of information with other states, §27-59-53.
Comptroller.
  Cancellation of permits, §27-59-17.
  Rules and regulations, §27-59-57.
Decals.
  Compressed gas users decal for motor vehicles, §27-59-29.
    Penalty for operating without, §27-59-31.
Definitions, §27-59-3.
  User tax, §27-59-303.
Depositories.
  Funds collected, §27-59-51.
Distributors.
  Defined, §27-59-3.
  Injunctions against doing business, §§27-59-9, 27-59-23.

LIQUEFIED COMPRESSED GAS TAX —Cont'd
Distributors —Cont'd
  Monthly report and remittance, §27-59-13.
  Permits, §§27-59-7, 27-59-9.
    Cancellation by comptroller, §27-59-17.
  Records.
    Retention, §27-59-25.
Enforcement, §27-59-1.
Erroneous or illegal collection of taxes.
  Refund, §27-59-47.
    User tax, §27-59-319.
Exchange of information with other states, §27-59-53.
  User tax, §27-59-323.
Exemptions, §§27-59-12, 27-59-39.
  User tax, §27-59-309.
Imposition of tax, §27-59-11.
Injunctions.
  Distributors.
    Engaging in business without permit, §27-59-9.
  Noncompliance punishable by injunction against doing business, §27-59-23.
Inspections, §27-59-41.
Levy of tax, §27-59-11.
Liens, §27-59-45.
Limitation of actions.
  Recovery by state of additional amounts, §27-59-25.
    User tax, §27-59-315.
Payment, §27-59-11.
  Monthly report and remittance, §27-59-13.
  User tax, §27-59-311.
Penalties.
  Applicable provisions, §27-59-37.
  Compressed gas users decal for motor vehicles.
    Operating without, §27-59-31.
  User tax.
    Applicable provisions, §27-59-313.
Permits.
  Distributors, §§27-59-7, 27-59-9.
    Cancellation of permits by comptroller, §27-59-17.
  User's permit, §27-59-305.
Prior law.
  Effect, §27-59-59.
Rates of tax, §27-59-11.
Records.
  Retention of records by distributors and other persons, §27-59-25.

LIQUEFIED COMPRESSED GAS TAX —Cont'd
Records —Cont'd
  User tax.
    Retention of records, §27-59-315.
Refunds, §27-59-35.
  Taxes erroneously or illegally collected, §27-59-47.
    User tax, §27-59-319.
Reports.
  Annual reports of Class II and Class III users, §27-59-33.
  Monthly report and remittance, §27-59-13.
  User tax.
    Monthly reports, §27-59-311.
Rules and regulations, §27-59-57.
  User tax, §27-59-325.
Sales tax law.
  Applicability.
    User tax, §27-59-313.
  Applicability of administrative provisions, §27-59-37.
Saving provision.
  Effect of prior law, §27-59-59.
Searches and seizures.
  Writ of summons and seizure, §27-59-45.
Sequestration.
  Writs of sequestration, §27-59-45.
Statute of limitations.
  Recovery by state of additional amounts, §27-59-25.
    User tax, §27-59-315.
Transportation.
  Inspection of vehicles transporting, §27-59-41.
User tax, §§27-59-301 to 27-59-325.
  Action by state to recover additional amounts.
    Statute of limitations, §27-59-315.
  Administration of provisions, §27-59-301.
  Definitions, §27-59-303.
  Deposit of proceeds, §27-59-321.
  Enforcement, §27-59-301.
  Exchange of information with other states, §27-59-323.
  Exemptions, §27-59-309.
  Imposition of tax, §27-59-307.
  Levy of tax, §27-59-307.
  Limitation of actions.
    Recovery by state of additional amounts, §27-59-315.
  Payment, §27-59-311.

LIQUEFIED COMPRESSED GAS TAX —Cont'd
User tax —Cont'd
  Penalties.
    Applicable provisions, §27-59-313.
  Permits, §27-59-305.
  Rate of tax, §27-59-307.
  Records.
    Retention, §27-59-315.
  Refunds.
    Erroneously or illegally collected taxes, §27-59-319.
  Reports.
    Monthly reports, §27-59-311.
  Rules and regulations, §27-59-325.
  Sales tax law.
    Applicability of provisions, §27-59-313.
  Statute of limitations.
    Recovery by state of additional amounts, §27-59-315.

LIQUOR.
Taxation.
  Breweries, §§27-71-501 to 27-71-511.
  General provisions, §§27-71-1 to 27-71-31.
  Light wine and beer, §§27-71-301 to 27-71-349.

LIVESTOCK.
Sales tax.
  Exemptions.
    Agricultural exemptions, §27-65-103.
    Amusements tax, activities exempted, §27-65-22.
    Concessions at religious or charitable events held at facilities, §27-65-111.
    Parking at livestock facilities for religious or charitable events, §27-65-105.

LOANS.
Emergency aid to local governments loan and grant program, §27-107-321.

LOCAL GOVERNMENTS.
Depositories for funds, §§27-105-301 to 27-105-371.
Emergency aid to local governments loan and grant program, §27-107-321.

LOCAL GOVERNMENTS' DEPOSITORIES, §§27-105-301 to 27-105-371.
Checks.
  Acceptance by banks of checks payable to county, municipality, political subdivision or body politics, §27-105-369.
County depositories.
  Alternative method of selecting depositories, §§27-105-333 to 27-105-341.
  Amount to be paid for privilege of keeping funds.
    Computation, §27-105-327.
  Bids to keep county funds, §27-105-305.
    Obstructing bids unlawful, §27-105-313.
    Readvertising for bids, §§27-105-307, 27-105-309.
  Bonds or other security.
    Closed depositories, §27-105-331.
    Withdrawal of bonds pledged or filed as security, §27-105-349.
  Chancery clerks.
    Performance of duties of county treasurers, §27-105-343.
  Checks.
    Acceptance by banks of checks payable to county, §27-105-369.
  Closed depositories.
    Bonds or other security, §27-105-331.
  Commissioner of banking and consumer finance.
    Designation of depository for county, §27-105-335.
  Commission issued depository, §27-105-317.
  Criminal penalties, §§27-105-345, 27-105-347.
  Definitions, §27-105-315.
  Drainage district funds, §27-105-351.
  Duty to deposit funds into, §27-105-371.
  Establishment, §27-105-303.
  Hospital funds, §27-105-365.
  Insufficient depository.
    Alternative method of selecting depositories, §27-105-339.
  Publication for bids to keep county funds, §27-105-305.

LOCAL GOVERNMENTS' DEPOSITORIES —Cont'd
County depositories —Cont'd
  Qualification as depository, §27-105-315.
  Receipts for deposits, §27-105-321.
  Reports.
    Receipts and disbursements by depositories, §27-105-323.
  Settlement by tax collector with county treasury, §27-105-325.
  Statements to chancery clerk, §27-105-327.
  State treasurer.
    Aid in selection, §27-105-311.
  Surplus funds, §27-105-367.
  Tax collector.
    Criminal penalties for prohibited acts by, §§27-105-345, 27-105-347.
    Deposit of funds, §27-105-337.
    Drainage taxes may be deposited by, §27-105-351.
    Settlement with county treasury, §27-105-325.
    Traffic in public funds prohibited, §27-105-345.
  Traffic in public funds.
    Prohibited, §27-105-345.
  Unidentifiable funds.
    Disposition, §27-105-371.
  Warrants for payment of money.
    Failure to pay county warrants, §27-105-329.
  Withdrawal of bonds pledged or filed as security, §27-105-349.
Hospitals.
  County and municipal hospital funds, §27-105-365.
Levee district.
  Provisions as to levee district depositories not repealed, §27-105-301.
Municipal depositories.
  Bond or other security, §27-105-355.
    Withdrawal of bond, §27-105-359.
  Checks.
    Acceptance by banks of checks payable to municipality, §27-105-369.
  Duties of depository, §27-105-357.
  Failure of any bank to qualify, §27-105-361.
  Hospital funds, §27-105-365.
  Making profit on public funds.
    Applicable penalties, §27-105-357.

LOCAL GOVERNMENTS' DEPOSITORIES —Cont'd
Municipal depositories —Cont'd
  Removing municipal funds.
    Applicable penalties, §27-105-357.
  Selection, §27-105-353.
  Surplus funds, §27-105-367.
  Term of office, §27-105-363.
Surplus funds, §27-105-367.

LUBRICATING OIL TAX, §§27-57-1 to 27-57-45.
Action by state to recover additional amounts.
  Statute of limitations, §27-57-25.
Actions.
  Power to institute proceedings, §27-57-31.
Administration of provisions, §27-57-1.
Armed forces.
  Exemptions, §27-57-17.
Bonds, surety.
  Distributors.
    Permit applications, §27-57-7.
Commission.
  Exchange of information with other states, §27-57-39.
Comptroller.
  Inspection of vehicles or boats transporting, §27-57-41.
  Rules and regulations, §27-57-43.
Definitions, §27-57-5.
Depositories.
  Funds collected, §27-57-35.
Distributors.
  Monthly report and remittance, §27-57-13.
  Permits, §§27-57-7, 27-57-9.
  Records.
    Retention, §27-57-25.
Enforcement, §27-57-1.
Erroneous or illegal collection.
  Refunds, §27-57-33.
Exemptions, §27-57-17.
Highways.
  Construction or reconstruction of highways.
    Deposit of tax receipts for, §27-57-37.
Imposition of tax, §27-57-11.
Injunctions.
  Distributors.
    Engaging in business without permit, §27-57-9.

LUBRICATING OIL TAX —Cont'd
Inspections.
  Rights of commissioner and agent, §27-57-27.
Levy of tax, §27-57-11.
Liens, §27-57-31.
Limitation of actions.
  Recovery by state of additional amounts, §27-57-25.
Lost or destroyed quantities.
  Credit or refund, §27-57-19.
Motor vehicle comptroller, §§27-57-7, 27-57-39, 27-57-43.
Payment.
  Monthly report and remittance, §27-57-13.
Penalties.
  Applicable provisions, §27-57-21.
Permits.
  Distributors, §§27-57-7, 27-57-9.
Prior law.
  Effect, §27-57-45.
Purpose of provisions, §27-57-3.
Rates of tax, §27-57-11.
Records.
  Retention of records by distributors and other persons, §27-57-25.
Refunds.
  Lost or destroyed oil, §27-57-19.
  Taxes erroneously or illegally collected, §27-57-33.
Reports.
  Distributors.
    Monthly report and remittance, §27-57-13.
  Persons not bonded as distributor, §27-57-15.
Right of entry.
  Inspections by commissioner and agent, §27-57-27.
Rules and regulations, §27-57-43.
Sales tax law.
  Applicability of administrative provisions, §27-57-21.
Saving provision.
  Effect of prior law, §27-57-45.
Searches and seizures.
  Writ of summons and seizure, §27-57-31.
Sequestration.
  Writs of sequestration, §27-57-31.
State highway fund.
  Deposit of receipts to credit of, §27-57-37.
Statute of limitations.
  Recovery of state of additional amounts, §27-57-25.

LUBRICATING OIL TAX —Cont'd
Transportation.
  Evidence of product transported, §27-57-41.
  Inspection of vehicles or boats, §27-57-41.
Vessels.
  Inspection of boat transporting, §27-57-41.

M

MAIL ORDER SALES.
Use tax, §27-67-4.

MAJOR ECONOMIC IMPACT AUTHORITY.
Shipbuilder and tire fabrication and assembly facilities.
  Sales tax exemptions, §27-65-101.

MANUFACTURERS OF CIGARETTES.
Nonsettling-manufacturer cigarettes.
  Fee on sale, use, consumption, distribution, manufacturer registration, §§27-70-1 to 27-70-23.

MARINAS.
Sales tax.
  Levy on marina services, §27-65-23.

MEAT AND MEAT PRODUCTS.
Sales tax.
  Custom meat processing, §27-65-23.

MENTAL HEALTH PROGRAMS FUND.
Alcoholic beverage taxes.
  Excise taxes.
    Markup for benefit of fund, §27-71-7.

METHANE.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.

MILITARY.
Gasoline tax.
  Armed forces.
    Defined, §27-55-5.
    Exemptions, §27-55-19.
Liquefied compressed gas tax.
  Armed forces.
    Defined, §27-59-3.
    Exemptions, §27-59-12.

MILITARY —Cont'd
Lubricating oil tax.
  Exemptions.
    Armed forces, §27-57-17.
Special fuel tax.
  Armed forces.
    Defined, §27-55-505.
    Exemption of fuel sold to United States government for use of, §27-55-527.
Use tax.
  Exemption of certain vehicles purchased by Mississippi citizens serving in armed forces, §27-67-7.

MILK AND MILK PRODUCTS.
Sales tax on materials used in repairing or expanding dairy producers' facilities.
  Rate of tax, §27-65-17.

MISSISSIPPI ACCOUNTABILITY AND TRANSPARENCY ACT.
Website regarding expenditures of state funds and bond proceeds, §§27-104-151 to 27-104-167.

MISSISSIPPI DEVELOPMENT AUTHORITY.
Negotiations involving economic development projects.
  Annual report of tax credits, loans, rebates and grants resulting from.
    Sales tax information to be provided, §27-65-81.
Reports.
  Negotiations involving economic development projects.
    Annual report of tax credits, loans, rebates and grants resulting from.
      Sales tax information to be provided, §27-65-81.
Tourism industry sales tax exemption for guided tours on navigable waters of state, §§27-65-22, 27-65-101.

MISSISSIPPI PERFORMANCE BUDGET AND STRATEGIC PLANNING ACT OF 1994, §§27-103-151 to 27-103-159.

MISSISSIPPI SALES TAX LAW, §§27-65-1 to 27-65-231.

MISSISSIPPI SPECIAL FUEL TAX LAW, §§27-55-501 to 27-55-569.

MISSISSIPPI USE TAX LAW, §§27-67-1 to 27-67-33.

MOBILE HOME PARKS.
Sales tax, §27-65-23.

MOBILE HOMES.
Sales tax.
  Rate.
    Retail sales, §27-65-17.

MOBILE PHONES.
Ringtones.
  Defined, §27-65-26.
  Sales tax.
    Sale, rental, lease of specified digital products, §27-65-26.

MODULAR HOMES.
Sales and use tax.
  Sales tax on factory built components, §27-65-17.
    Disclosure of amount to buyers.
      Sellers' duty, §27-65-17.1.

MOTION PICTURES.
Digital audio-visual works.
  Defined, §27-65-26.
  Sales tax.
    Sale, rental, lease of specified digital products, §27-65-26.
  Use tax.
    Generally, §§27-67-1 to 27-67-33.
    Levy and collection, §27-67-5.
    Mail order sales, §27-67-4.

MOTORCYCLES.
Sales tax.
  Rate.
    Repairing and serving, §27-65-23.

MOTOR FUEL TAX.
Gasoline tax, §§27-55-1 to 27-55-65.
Special fuel tax, §§27-55-501 to 27-55-569.

MOTOR VEHICLE AND MANUFACTURED HOUSING TITLE LAW.
Appellate review by taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.

MOTOR VEHICLE REGISTRATION.
Appellate review by taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.
International registration plan.
  Appellate review by taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.

MOTOR VEHICLES.
Individual sale of motor vehicles.
  Sales tax, §27-65-201.
Non-commercial sale of motor vehicle.
  Sales tax, §27-65-201.
Private sales of motor vehicle.
  Sales tax, §27-65-201.
Rental vehicles.
  Sales tax, §27-65-231.
Sales tax.
  Private sale of motor vehicle, §27-65-201.
  Rate.
    Repairing and serving, §27-65-23.
  Rental vehicles, §27-65-231.
Shipbuilder and tire fabrication and assembly facilities.
  Sales tax exemptions, §27-65-101.
State-owned vehicles.
  Purchases, justification, emergencies, requests, §27-103-129.
  Reports, vehicles in agency possession, §27-103-129.
Tires.
  Sales tax, §27-65-23.

MOTOR VEHICLE TITLING.
Appellate review by taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.

MUNICIPAL ELECTIONS.
Notice.
  Special sales tax by municipalities of 150,000 or more, §27-65-241.
Sales tax.
  Special tax by municipalities of 150,000 or more, §27-65-241.

MUNICIPALITIES.
Depositories.
  Local governments' depositories generally, §§27-105-301 to 27-105-371.
Emergency aid to local governments loan and grant program, §27-107-321.
Gasoline, special fuel and compressed gas excise taxes.
  Exemption, §27-55-12.
Light wine and beer tax.
  Levy of privilege tax by municipality, §27-71-345.
Municipal revolving fund.
  Unencumbered cash balance in general fund at close of fiscal year.
    Distribution to, §27-103-213.

MUNICIPALITIES —Cont'd
Sales tax.
  Distribution of revenues collected, §27-65-75.
  Erroneous diversion of collected tax moneys to municipalities with population of 500 or less, §27-65-97.
  Exemptions.
    Sales to municipalities, §27-65-105.
  Special tax imposed by municipalities of 150,000 or more, §§27-65-241, 27-65-243.
Taxation.
  Reports of taxing entities, §27-101-21.
  Sales tax.
    Special tax for municipalities of 150,000 or more, §§27-65-241, 27-65-243.
Tobacco tax.
  Privileged tax upon dealers in cigarettes.
    Municipalities may impose, §27-69-69.
  Provisions not to construe municipal privileged tax, §27-69-23.

MUNICIPAL REVOLVING FUND.
Unencumbered cash balance in general fund at close of fiscal year.
  Distribution to, §27-103-213.

MUNICIPAL TAXATION.
Sales tax.
  Special sales tax by municipalities with population of 150,000 or more.
    Annexed areas.
      Imposition in, requirements, §27-65-241.
    Applicability, §27-65-241.
    Collection, §27-65-241.
    Commission.
      Establishment, members, expenditures, approval required, §27-65-241.
    Definitions, §27-65-241.
    Election on question, §27-65-241.
    Exemptions, §27-65-241.
    Inapplicability, §27-65-241.
    Mississippi sales tax law.
      Applicability of provisions, §27-65-241.
    Notice of election, publication, §27-65-241.

MUNICIPAL TAXATION —Cont'd
Sales tax —Cont'd
  Special sales tax by municipalities with population of 150,000 or more —Cont'd
    Privilege of doing business in municipalities, §27-65-241.
    Rate, §27-65-241.
    Resolution.
      Adoption required before imposing tax, §27-65-241.
    Revenue collected, expenditures allowed, §27-65-241.
    Special fund, proceeds placed in, §27-65-241.

MUSIC.
Digital audio works.
  Defined, §27-65-26.
  Sales tax.
    Sale, rental, lease of specified digital products, §27-65-26.
  Use tax.
    Generally, §§27-67-1 to 27-67-33.
    Levy and collection, §27-67-5.
    Mail order sales, §27-67-4.

N

NATIVE AMERICANS.
Choctaw Indians.
  Tribal tax, §§27-65-211 to 27-65-221.
Sales tax.
  Exemptions.
    Mississippi Band of Choctaw Indians, §27-65-215.
    Sales of food purchased with food instruments issued by Mississippi Band of Choctaw Indians, §27-65-111.
    Sales to, §27-65-105.
  Tribal tax by Choctaw Indians, §§27-65-211 to 27-65-221.

NATURAL GAS.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.

NEWSPAPERS.
Sales tax.
  Exemptions, §27-65-111.

NONPROFIT CORPORATIONS.
Sales tax exemptions.
  Providing certain services, §27-65-111.

NONRESIDENTS.
Tobacco tax.
  Nonresident tobacco dealers.
    Reciprocity as to requirements for doing business, §27-69-79.

NONSETTLING-MANUFACTURER CIGARETTES.
Fee on sale, use, consumption, distribution, manufacturer registration, §§27-70-1 to 27-70-23.

NOTICE.
Elections.
  Municipal elections.
    Municipality seeking to impose special sales tax, §27-65-241.
Facilitating business rapid response to state declared disasters.
  Out-of-state businesses conducting operations in state related to declared disaster.
    Notice to department of revenue, §27-113-9.
Gasoline tax.
  Intent to import gasoline, §27-55-53.
Open public meetings.
  Accountability and transparency act.
    Publication of meeting notices on website, §27-104-163.
Sales tax.
  Failure of sureties on taxpayer's bond to pay tax, §27-65-57.
  Failure to file return, §27-65-35.
  Lien of tax, §27-65-57.
  Taxes due and unpaid, §27-65-37.
Special fuel tax.
  Intent to import special fuel, §27-55-559.
Taxpayer appeals.
  Assessment, refund, tag penalty.
    Findings, §27-77-5.
    Hearings, §27-77-5.
  IFTA license.
    Application denial, §27-77-11.
    Revocation.
      Hearing, §27-77-12.
      Intent, §27-77-12.
  Permit, tag, title.
    Application denial, §27-77-11.
    Suspension, surrender, seizure, revocation.
      Hearing, §27-77-9.
      Intent, §27-77-9.
Tobacco tax.
  Injunctions, §27-69-61.

NOTICE —Cont'd
Tobacco tax —Cont'd
  Permits.
    Revocation, §27-69-9.
  Seizure of products, §27-69-55.

NURSERIES.
Sales tax exemption.
  Ornamental plants at commercial plant nurseries, soil supplies for, §27-65-111.

O

OIL AND GAS.
Biomass.
  Renewable crude oil produced from biomass.
    Sales tax exemption.
      Construction and equipment for facility producing, §27-65-101.
Gasoline tax.
  General provisions, §§27-55-1 to 27-55-65.
Interstate commercial carriers motor fuel tax.
  General provisions, §§27-61-1 to 27-61-33.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.
Lubricating oil tax.
  General provisions, §§27-57-1 to 27-57-45.
Natural gas.
  Liquefied compressed gas tax, §§27-59-1 to 27-59-325.
Natural sand converted into proppants used in oil and gas exploration.
  Sales tax exemptions.
    Equipment and machinery, §27-65-101.
    Sales of fuel to enterprise eligible for equipment exemption, §27-65-107.
Refineries.
  Sales tax.
    Manufacturing and processing machinery, construction activities, §27-65-24.
Sales tax.
  Contractors on oil and gas wells, §27-65-21.

OIL AND GAS —Cont'd
Sales tax —Cont'd
  Refineries.
    Manufacturing and processing machinery, construction activities, §27-65-24.
  Renewable crude oil produced from biomass.
    Construction and equipment for facility producing.
      Sales tax exemption, §27-65-101.
Special fuel tax, §§27-55-501 to 27-55-569.

OPEN MEETINGS.
Accountability and transparency act.
  Website regarding expenditures of state funds and bond proceeds.
    Publication of meeting notices, §27-104-163.
Notice of meetings.
  Accountability and transparency act.
    Publication of meeting notices on website, §27-104-163.
Taxpayer appeals to board of review and board of tax appeals.
  Exemption, §27-77-15.
Website.
  Accountability and transparency act.
    Publication of meeting notices, §27-104-163.

P

PANELIZED HOMES.
Sales and use tax.
  Sales tax on factory built components, §27-65-17.
    Disclosure of amount to buyers.
      Sellers' duty, §27-65-17.1.

PARTNERSHIPS.
Sales tax.
  Failure to file return, notice of assessment and damages, §27-65-35.
  Taxes due and unpaid, notice of assessment and damages, §27-65-37.

PEDDLERS.
Salesmen's tax, §§27-67-501 to 27-67-511.
Tobacco tax generally, §§27-69-1 to 27-69-79.

PENSIONS AND RETIREMENT.
Iran divestment act of 2015.
  Limitation of investments, §27-106-13.
    Exception, §27-106-15.

PERJURY.
Cruise vessels.
  Privilege licenses.
    False oaths, §27-109-1.
Tobacco tax.
  Examination of books and records.
    False answers to questions under oath, §27-69-35.

PERSONAL PROPERTY.
Casinos.
  Sales tax.
    Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.
Salesmen's tax.
  General provisions, §§27-67-501 to 27-67-511.
Sales tax.
  Tangible personal property.
    Defined, §27-65-3.
    Selling upon certain floating structures, §27-65-18.
    Wholesale and retail sales, §27-65-17.
Use tax.
  General provisions, §§27-67-1 to 27-67-33.

PETITIONS.
Taxpayer appeals to chancery court, §§27-77-7, 27-77-13.

PETROLEUM AND PETROLEUM PRODUCTS.
Gasoline tax, §§27-55-1 to 27-55-65.
I.C.C. registrations.
  Motor fuels tax, §§27-61-1 to 27-61-33.
Interstate commercial carriers motor fuel tax.
  General provisions, §§27-61-1 to 27-61-33.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.
Lubricating oil tax.
  General provisions, §§27-57-1 to 27-57-45.
Special fuel tax, §§27-55-501 to 27-55-569.

PINECREST WEEKEND SNACKPACKS FOR KIDS.
Sales tax exemptions, §27-65-111.

PLANTS.
Sales tax exemption.
  Ornamental plants at commercial plant nurseries, soil supplies for, §27-65-111.

POLLUTION CONTROL.
Equipment.
  Sales tax exemptions, §27-65-101.
Sales tax.
  Exemptions, §27-65-101.
Taxation.
  Sales tax exemptions, §27-65-101.

PRECUT HOMES.
Sales and use tax.
  Sales tax on factory built components, §27-65-17.
    Disclosure of amount to buyers.
      Sellers' duty, §27-65-17.1.

PREFERRED STOCK.
Perpetual preferred stock defined, §§27-105-5, 27-105-315.

PRISON TERMS.
Alcoholic beverage taxes, §§27-71-5, 27-71-23.
  Breweries, §27-71-511.
  Counterfeiting or reuse of labels, §27-71-17.
  Light wine and beer, §27-71-347.
    Reuse of stamps, §27-71-313.
County depositories.
  Traffic in public funds, §27-105-345.
Cruise vessels.
  Privilege licenses, §27-109-13.
Depositories for state funds.
  Loan or removal of state funds, §27-105-27.
Gasoline tax.
  Metering requirements, §27-55-35.
Interstate commercial carriers motor fuel tax, §27-61-21.
Local governments' depositories.
  County depositories.
    Obstructing bids, §27-105-313.
Sales tax, §27-65-85.
Special fuel tax.
  Distributor of special fuel.
    Operating without permit, §27-55-509.
  Highway construction equipment.
    Unlawful purchase of untaxed fuel for use in, §27-55-569.

PRISON TERMS —Cont'd
Special fuel tax —Cont'd
Inspections.
Refusal to allow, §27-55-547.
Metering requirement violations, §27-55-543.
Tobacco tax.
Reuse of stamps, §27-69-47.

PRIVILEGE LICENSES.
Cruise vessels, §§27-109-1 to 27-109-15.

PRIVILEGE TAXES.
Alcoholic beverage permittees.
Annual privilege license tax, §27-71-5.
Reciprocal collection of taxes, §§27-75-1 to 27-75-17.
Tax refunds, §§27-73-1 to 27-73-13.

PROCUREMENT PORTAL.
Website regarding expenditures of state funds and bond proceeds, §§27-104-151 to 27-104-167.

PROFESSIONAL GOLF TOURNAMENT.
Charitable organization hosting.
Sales tax exemption, §27-65-101.

PROPANE.
Liquefied compressed gas tax.
General provisions, §§27-59-1 to 27-59-325.

PROPERTY TAXES.
Reciprocal collection of taxes, §§27-75-1 to 27-75-17.
Tax refunds, §§27-73-1 to 27-73-13.

PROPYLENE.
Liquefied compressed gas tax.
General provisions, §§27-59-1 to 27-59-325.

PUBLICATION OF NOTICE.
Municipalities.
Special sales tax.
Election by municipality seeking to impose, §27-65-241.

PUBLIC FUNDS.
Accountability and transparency act.
Website with information on expenditure of state funds and bond proceeds, §§27-104-151 to 27-104-167.
Budget contingency fund.
Created, §27-103-301.

PUBLIC FUNDS —Cont'd
Capital expense fund, §27-103-303.
Unencumbered cash balance in general fund at close of fiscal year.
Distribution to, §27-103-213.
Emergency aid to local government fund, §27-107-321.
Mississippi accountability and transparency act.
Website with information on expenditure of state funds and bond proceeds, §§27-104-151 to 27-104-167.
Municipal revolving fund.
Unencumbered cash balance in general fund at close of fiscal year.
Distribution to, §27-103-213.
Tourism sales tax incentive fund.
Deposit of sales tax revenue, §27-65-75.
Website with information on expenditure of state funds and bond proceeds.
Mississippi accountability and transparency act, §§27-104-151 to 27-104-167.
Working cash-stabilization reserve fund, §§27-103-203 to 27-103-207.
Unencumbered cash balance in general fund at close of fiscal year.
Distribution to, §27-103-213.

PUBLIC OFFICERS AND EMPLOYEES.
Sales tax.
Failure of state officer or employee to pay state sales tax.
Effect, §27-65-40.

PUBLIC PROCUREMENT REVIEW BOARD.
Finance and administration department, §27-104-7.

PUBLIC PURCHASING AND CONTRACTING.
Finance and administration department.
Public procurement review board, §27-104-7.
Public procurement review board.
Finance and administration department, §27-104-7.

PUBLIC UTILITIES.
Carbon dioxide and anthropogenic carbon dioxide.
Sales tax, §27-65-19.

PUBLIC UTILITIES —Cont'd
Electricity distributors.
  Sales tax.
    Levy on public utilities, §27-65-19.
Fracking.
  Carbon dioxide and anthropogenic carbon dioxide, sale of.
    Sales tax, §27-65-19.
Sales tax, §27-65-19.
  Exemptions, §27-65-107.

R

RADIO.
Sales tax.
  Levy on business of radio or television installing, repairing or servicing, §27-65-23.

RAILROADS.
Sales tax.
  Exemptions, §27-65-107.
    Sales and rentals of rolling stock, §27-65-101.
  Rate.
    Sale of materials for tracks and track structures, §27-65-17.

REAL PROPERTY.
Finance and administration department.
  Lease, sublease, or lease, purchase, §27-104-107.

RECIPROCITY.
Interstate commercial carriers motor fuel tax.
  Agreements entered into by commission, §27-61-27.
  Authority for reciprocal agreements with neighboring states, §27-61-21.
Tobacco tax.
  Nonresident tobacco dealers.
    Requirements for doing business, §27-69-79.

RECORDS.
Alcoholic beverage taxes.
  Light wines and beer.
    Examination of records, §27-71-329.
    Manufacturers, distributors, wholesalers, retailers and brew pubs, §27-71-327.
  Persons engaged in business of selling alcoholic beverages, §27-71-25.
    Examination of records, §27-71-27.

RECORDS —Cont'd
Gasoline tax.
  Retention of records by distributors of gasoline and other persons, §27-55-37.
Interstate commercial carriers motor fuel tax, §27-61-15.
  Bulk purchases, §27-61-12.
Light wine and beer tax.
  Examination of records, §27-71-329.
  Manufacturers, distributors, wholesalers, retailers and brew pubs, §27-71-327.
  State auditor to verify books and records, §27-71-339.
Liquefied compressed gas tax.
  Retention of records by distributors and other persons, §27-59-25.
  User tax.
    Retention of records, §27-59-315.
Lubricating oil tax.
  Retention of records by distributors and other persons, §27-57-25.
Sales tax.
  Preservation of records by commissioner, §27-65-79.
  Taxpayers, §27-65-43.
Special fuel tax.
  Retention of records by distributors and other persons, §27-55-545.
State departments and agencies.
  Fiscal affairs, §27-104-23.
State depository commission.
  Proceedings of commission, §27-105-15.
Tobacco tax, §27-69-77.
  Dealers, §27-69-35.

RECYCLING.
State based companies manufacturing products using recycled materials.
  Report.
    Department of finance and administration, §27-104-109.

REFINERIES.
Sales tax.
  Manufacturing and processing machinery, construction activities, §27-65-24.

REFUNDS.
Tax refunds generally, §§27-73-1 to 27-73-13.

REGIONAL SOLID WASTE MANAGEMENT AUTHORITY.
Taxation.
  Reports of taxing entities, §27-101-21.

REGISTRATION.
Use tax.
  Sellers, §27-67-9.

RELIGION.
Sales tax on amusements.
  Activities exempted, §27-65-22.

RELIGIOUS ORGANIZATIONS.
Use tax.
  Exemptions, §27-67-7.
    Retroactive application of exemption on certain property, §27-67-8.
  Records.
    Examination of records, §27-67-8.

RENTAL VEHICLES.
Sales tax, §27-65-231.

REPORTS.
Alcoholic beverage taxes.
  Light wine and beer.
    Wholesalers, §27-71-325.
Cigarettes and tobacco products.
  Nonsettling manufacturer cigarettes.
    Report required of distributor, §27-70-9.
Finance and administration department.
  Agencies to file reports with department, §27-104-1.
  Recycled materials.
    State based companies manufacturing products using, §27-104-109.
Gasoline tax.
  Monthly report and remittances, §27-55-13.
  Persons not bonded as distributors of gasoline, §27-55-15.
  Transportation reports, §27-55-33.
Interstate commercial carriers motor fuel tax, §27-61-11.
Iran divestment act of 2015, §27-106-11.
Legislative budget office.
  Reports to office, §§27-103-107, 27-103-109.
Light wine and beer tax.
  Wholesalers, §27-71-325.
Liquefied compressed gas tax.
  Annual reports of Class II and Class III users, §27-59-33.

REPORTS —Cont'd
Liquefied compressed gas tax —Cont'd
  Monthly report and remittance, §27-59-13.
  User tax.
    Monthly reports, §27-59-311.
Local governments.
  County depositories.
    Receipts and disbursements, §27-105-323.
Lubricating oil tax.
  Distributors.
    Monthly report and remittance, §27-57-13.
  Persons not bonded as distributor, §27-57-15.
Mississippi development authority.
  Negotiations involving economic development projects.
    Annual report of tax credits, loans, rebates and grants resulting from.
      Sales tax information to be provided, §27-65-81.
Recycled materials.
  State based companies manufacturing products using.
    Department of finance and administration, §27-104-109.
Special fuel tax.
  Bonded distributor of special fuel.
    Monthly report, §27-55-523.
  Transportation reports, §27-55-541.
State departments and agencies.
  Annual reports, §§27-101-1 to 27-101-5.
State fiscal officer.
  Annual financial statements by agencies.
    Consolidated report, §27-104-4.
Taxing entities, annual reports, §27-101-21.
Use tax.
  County tax collectors, §27-67-5.

RESTAURANTS.
Sales tax.
  Floating restaurants.
    Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.

RIGHT OF ENTRY.
Gasoline tax.
  Inspections by commissioner and agents, §27-55-39.

RIGHT OF ENTRY —Cont'd
Lubricating oil tax.
  Inspections by commissioner and agent, §27-57-27.

RINGTONES.
Defined, §27-65-26.
Sales tax.
  Sale, rental, lease of specified digital products, §27-65-26.

S

SALES.
Tobacco tax.
  Seizure, forfeiture, sale, §§27-69-53 to 27-69-57.

SALES AND USE TAX ADMINISTRATION LAW, §§27-68-1 to 27-68-17.
Certified automated system.
  Liability of person providing, §27-68-17.
Certified service providers, §27-68-17.
Citation of act, §27-68-1.
Definitions, §27-68-3.
Implementation of provisions, §27-68-7.
Legislative findings, §27-68-5.
Streamlined sales and use tax agreement, §27-68-7.
  Implementation of conditions to be by action of state, §27-68-9.
  Inconsistency of laws.
    Laws not to be declared invalid because of, §27-68-15.
  Member states to be sole beneficiaries of, §27-68-15.
  Minimum standards to be met before entry into, §27-68-11.
  Nature of agreement, §27-68-13.
  Provisions not to invalidate or amend laws of state, §27-68-9.
  Purpose of agreement, §27-68-13.
Title of act, §27-68-1.

SALESMEN.
Salesmen's tax, §§27-67-501 to 27-67-511.

SALESMEN'S TAX, §§27-67-501 to 27-67-511.
Administration of provisions, §27-67-511.
Citation of law, §27-67-501.

SALESMEN'S TAX —Cont'd
Collection, §27-67-509.
Definitions, §27-67-503.
Exemptions, §27-67-507.
Levy of tax, §27-67-505.
Purpose of provisions, §27-67-501.
Rate of tax, §27-67-505.
Returns, §27-67-509.

SALES TAX, §§27-65-1 to 27-65-231.
Additional nature of tax, §27-65-73.
Administration of provisions, §27-65-87.
  Employees to administer, appointment, §27-65-89.
Agents for out-of-state dealers.
  Liability of, §27-65-55.
Agricultural exemptions, §27-65-103.
  Concessions at religious or charitable events held at facilities, §27-65-111.
  Parking at agricultural facilities for religious or charitable events, §27-65-105.
Air conditioning installation and repairs.
  Rate of tax, §27-65-23.
Alcoholic beverages, §27-65-25.
Amusements.
  Levy of tax, §27-65-22.
Appeals.
  Taxpayers aggrieved by department actions, §§27-77-1 to 27-77-19.
Assessment of taxes and damages.
  Application for revision of tax assessed, §27-65-42.
  Failure to file return, §27-65-35.
  Jeopardy assessment, §27-65-61.
  Taxes due and unpaid, §27-65-37.
  Time for, §27-65-42.
Attachment.
  Judgment for taxes as basis for issuance of writ of attachment, §27-65-57.
Attorney general, prosecuting attorneys, district attorneys.
  Assistance in enforcement, §27-65-87.
Bad debts actually charged off.
  Credit on subsequent return or report, §27-65-33.
Beer.
  Wholesale sales and retail sales.
    Rate of tax, §27-65-17.
Billiards, pool or domino parlors.
  Rate of tax, §27-65-23.

SALES TAX —Cont'd
Blood.
  Sales to Mississippi blood services, exemptions, §27-65-111.
Bonds, surety.
  Failure of sureties to pay tax.
    Notice, §27-65-57.
  Permit to engage in business, §27-65-27.
  Taxpayers, tax liability, §27-65-33.
Bowling or tenpin alleys.
  Rate of tax, §27-65-23.
Broadband technologies.
  Equipment used in the deployment of broadband technologies.
    Exemptions, §27-65-101.
Bundled transactions.
  Telecommunications services, §27-65-19.
Burglar and fire alarm systems or services.
  Rate of tax, §27-65-23.
Business defined, §27-65-9.
Cable TV systems, subscription TV services and similar activities.
  Rate of tax, §27-65-23.
Carriers of passengers and property.
  Rate of tax, §27-65-17.
Car washes.
  Rate of tax, §27-65-23.
Casinos.
  Floating structures.
    Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.
Checks.
  Remittances, §27-65-73.
Children's museum.
  Sales of items to, exemption, §27-65-111.
Clothing and footwear.
  Tax holiday, §27-65-111.
Collection of tax.
  Seller to collect, §27-65-31.
  Statute of limitation.
    Collection of taxes due, §27-65-42.
Colleges, universities, community or junior colleges.
  Distribution of tax revenue to, §27-65-75.
Compensation or discount and retention of tax liability.
  Collecting tax, filing returns and paying tax, complying with statutes, §27-65-33.

SALES TAX —Cont'd
Computer software sales and services.
  Rate of tax, §27-65-23.
Confidentiality.
  Returns, §27-65-81.
Consideration received from third parties.
  Gross proceeds of sale include, §27-65-3.
Contractors.
  Distribution of proceeds derived from contractor's taxes, §27-65-75.
  Levy on business of contracting, §27-65-21.
Cotton compresses or cotton warehouses.
  Distribution of proceeds derived from sales by, §27-65-75.
Counties.
  Distribution of proceeds, §27-65-75.
  Exemptions.
    Sales to counties, §27-65-105.
County port authorities.
  Levy on sale of machinery used in operation of structures, facilities and land acquired and operated pursuant to provisions, §27-65-20.
Credit.
  Taxes paid during period taxpayer operated without permit, §27-65-3.
Credit for overpayment, §27-65-53.
Creosoting or treating, planing or sawing.
  Rate of tax, §27-65-23.
Criminal penalties, §27-65-85.
  Violations of requirements as to collection by seller, §27-65-31.
Dairy producers.
  Defined, §27-65-17.
  Materials used in repairing or expanding buildings and facilities.
    Rate of tax, §27-65-17.
Definitions, §§27-65-3 to 27-65-11.
  Dairy producers, §27-65-17.
  Oil or gas well contracting, §27-65-21.
  Sales and use tax administration law, §27-68-3.
  Specified digital products, §27-65-26.
Delinquency.
  Judgment for taxes, §27-65-57.
  Limitations of actions for collection of taxes due, §27-65-42.
  Penalties, §§27-65-33, 27-65-39.
    Assessment of damages, §27-65-35.

SALES TAX —Cont'd
Delivery charges.
  Defined, §27-65-3.
Diabetes organizations, sales to, exemption, §27-65-111.
Digital products.
  Selling, renting, leasing specified products.
    Rate of tax, §27-65-26.
Distribution of revenue collected, §27-65-75.
  Prior distributions not affected by provisions, §27-65-95.
Distributors.
  Defined, §27-65-5.
Doing business defined, §27-65-9.
Drugs.
  Exemptions, §27-65-111.
Due date, §27-65-33.
Durable medical equipment.
  Exemptions, §27-65-111.
Electricians, electrical work, wiring, electrical equipment installation and repair.
  Rate of tax, §27-65-23.
Electric power associations.
  Sale of tangible personal property to.
    Rate of tax, §27-65-17.
Elevator or escalator installation, repair or service.
  Rate of tax, §27-65-23.
Employees to administer provisions.
  Appointment, removal, §27-65-89.
Enforcement, §27-65-87.
Estimated sales tax liability.
  Payment of percentage, §27-65-33.
Execution of judgments.
  Alias executions, §27-65-67.
  Damages in consequence of seizure and sale of property.
    Sheriff and special agent not personally liable, §27-65-69.
  Judgment for taxes as basis for issuance of writ of execution, §27-65-57.
  Sale under authority of writ of execution.
    Bid at sale, §27-65-65.
Exemptions.
  Agricultural, §27-65-103.
  Amusements, activities exempted from tax levy, §27-65-22.
  Classification as tax exemptions, §27-65-109.
  Clothing and footwear.
    Tax holiday, §27-65-111.

SALES TAX —Cont'd
Exemptions —Cont'd
  Firearms and ammunition sold during Second Amendment weekend tax holiday, §27-65-111.
  Food sold to charitable organization for food bank, §27-65-111.
  Generally, §27-65-111.
  Governmental, §27-65-105.
  Industrial, §27-65-101.
  Pollution control equipment, §27-65-101.
  Utility, §27-65-107.
Extension of time.
  Making return, payment of taxes, §27-65-33.
Farmers markets.
  Sales of state grown, made or processed products, §27-65-103.
Farm tractors and farm implements.
  Rate of tax, §27-65-17.
Film developing or photo finishing.
  Rate of tax, §27-65-23.
Firearms and ammunition sold during Second Amendment weekend tax holiday, exemption, §27-65-111.
Fire departments.
  Exemption of sales of firefighting equipment to fire departments, §27-65-105.
Food sold to charitable organization for food bank, §27-65-111.
Foundries, machine or general repairing.
  Rate of tax, §27-65-23.
Furniture repairing or upholstering.
  Rate of tax, §27-65-23.
Garnishment.
  Judgment for taxes as basis for issuance of writ of garnishment, §27-65-57.
Gross income.
  Defined, §27-65-3.
Gross proceeds of sale.
  Defined, §27-65-3.
Home medical equipment.
  Exemptions.
    Sale under social security, §27-65-105.
Hospitals.
  Exemptions, §27-65-111.
Hotels, motels, tourist courts or camps and trailer parks.
  Rate of tax, §27-65-23.

SALES TAX —Cont'd
Hotels, motels, tourist courts or camps and trailer parks —Cont'd
  Taxes levied under authority of local or private law.
    Hotel or motel defined, §27-65-23.1.
Improper taxes.
  Disbursement from treasury to taxpayer, §27-65-51.
Indian affairs.
  Exemptions.
    Mississippi Band of Choctaw Indians, §27-65-215.
    Sales of food purchased with food instruments issued by Mississippi Band of Choctaw Indians, §27-65-111.
  Tribal tax by Choctaw Indians, §§27-65-211 to 27-65-221.
Injunctions.
  Collection of taxes and enforcement of provisions not to be enjoined, §27-65-71.
  Permits to engage in business.
    Violations of requirement, §27-65-27.
Installation charges.
  Defined, §27-65-3.
Insulation service or repair.
  Rate of tax, §27-65-23.
Interest as penalty.
  Deficient return, §27-65-39.
  Delinquency, §§27-65-33, 27-65-39.
    Assessment of damages, §27-65-35.
Interest on overpayment.
  Untimely refund or credit, §27-65-53.
Jewelry or watch repairing.
  Rate of tax, §27-65-23.
Judgment for taxes, §27-65-57.
Landscaping, grading, excavating or dredging.
  Rate of tax, §27-65-23.
Laundering, cleaning, pressing or dyeing.
  Rate of tax, §27-65-23.
Levy of tax, §27-65-13.
  Alcoholic beverage sales, §27-65-25.
  Amusements, §27-65-22.
  Contracting, §27-65-21.
  County port authorities.
    Sale of machinery used in operation, §27-65-20.
  Floating structures.
    Selling tangible personal property or performing construction upon, §27-65-18.

SALES TAX —Cont'd
Levy of tax —Cont'd
  Miscellaneous businesses, §27-65-19.
  Public utilities, §27-65-19.
  Telegraph or telephone business, §27-65-19.
  Wholesale and retail sales of tangible personal property, §27-65-17.
Lien of tax, §§27-65-41, 27-65-55.
  Judgment for taxes as lien, §27-65-57.
  Notice of tax lien, §27-65-57.
Limitation of actions.
  Collection of taxes due, §27-65-42.
Livestock.
  Exemptions.
    Agricultural exemptions, §27-65-103.
    Amusements tax, activities exempted, §27-65-22.
    Concessions at religious or charitable events held at facilities, §27-65-111.
    Parking at livestock facilities for religious or charitable events, §27-65-105.
Manufacturing machinery and machine parts.
  Rate of tax, §27-65-17.
Marina service.
  Rate of tax, §27-65-23.
Material purchase certificate.
  Defined, §27-65-3.
Meat processing.
  Rate of tax, §27-65-23.
Medicines.
  Exemptions, §27-65-111.
Miscellaneous businesses.
  Rate of tax, §27-65-23.
Modular homes, panelized homes and precut homes.
  Factory built components, §27-65-17.
    Disclosure of amount to buyers.
      Sellers' duty, §27-65-17.1.
Motor fuel.
  Exemption, §27-65-111.
Motor vehicles.
  Rate of tax, §27-65-17.
    Repairing or serving, §27-65-23.
  Rental vehicles, §27-65-231.
  Sale or use of motor vehicles, §27-65-201.
Municipalities.
  Distribution of revenues collected, §27-65-75.
  Erroneous diversion of collected tax moneys to municipalities with population of 500 or less, §27-65-97.

SALES TAX —Cont'd
Municipalities —Cont'd
  Exemptions.
    Sales to municipalities, §27-65-105.
  Special sales tax by municipalities of 150,000 or more.
    Annexed areas.
      Imposition in, requirements, §27-65-241.
    Applicability, §27-65-241.
    Collection, §27-65-241.
    Commission.
      Establishment, members, expenditures, approval required, §27-65-241.
    Definitions, §27-65-241.
    Election on question, §27-65-241.
    Exemptions, §27-65-241.
    Inapplicability, §27-65-241.
    Mississippi sales tax law.
      Applicability of provisions, §27-65-241.
    Notice of election, publication, §27-65-241.
    Privilege of doing business in municipalities, §27-65-241.
    Rate, §27-65-241.
    Resolution.
      Adoption required before imposing tax, §27-65-241.
    Revenue collected, expenditures allowed, §27-65-241.
    Special fund, proceeds placed in, §27-65-241.
Newspapers.
  Exemptions, §27-65-111.
Non-commercial sale of motor vehicle, §27-65-201.
Notice.
  Failure of sureties on taxpayer's bond to pay tax, §27-65-57.
  Failure to file return, §27-65-35.
  Lien of tax, §27-65-57.
  Taxes due and unpaid, §27-65-37.
Office and business machine repair.
  Rate of tax, §27-65-23.
Oil, gas and other mineral resources.
  Contractors on oil and gas wells, §27-65-21.
  Surveying, exploring, drilling, producing or distributing services.
    Rate of tax, §27-65-23.
Overpayment.
  Refunds, §27-65-53.

SALES TAX —Cont'd
Parking garages and lots.
  Rate of tax, §27-65-23.
Payment of tax, §27-65-33.
  How remittances made, §27-65-73.
  Taxes due and unpaid.
    Assessment, notice, §27-65-37.
Penalties.
  Criminal penalties, §27-65-85.
    Violations of requirements as to collection by seller, §27-65-31.
  Deficient return, §27-65-39.
  Delinquency, §§27-65-33, 27-65-39.
    Assessment of damages, §27-65-35.
  Intentional disregard causing deficient or delinquent tax, additional penalties, §27-65-39.
  State officer or employee.
    Failure to pay state sales tax, §27-65-40.
Permit.
  Engaging in business or activity which will subject person to tax, §27-65-27.
  Retail rate on purchases.
    Payment by taxpayer failing to obtain sales tax permit, §27-65-3.
  Taxpayer required to obtain before engaging in business, §27-65-3.
Plumbing and pipe fitting.
  Rate of tax, §27-65-23.
Pollution control equipment.
  Exemptions, §27-65-101.
Ports and harbors.
  County port authorities.
    Sale of machinery used in operation, §27-65-20.
Prepaid student meal plans.
  Sales not doing business, §27-65-9.
Prepared meals.
  Sales by schools not doing business, §27-65-9.
Private sales of motor vehicle, §27-65-201.
Public officers and employees.
  Failure of state officer or employee to pay state sales tax.
    Effect, §27-65-40.
Public utilities, §27-65-19.
  Exemptions, §27-65-107.
Radio or TV installation, repair or service.
  Rate of tax, §27-65-23.

SALES TAX —Cont'd
Railroad tracks and track structures.
  Materials used in.
    Rate of tax, §27-65-17.
Rates of tax.
  Alcoholic beverage sales, §27-65-25.
  Amusements, §27-65-22.
  Contracting, §27-65-21.
  County port authorities.
    Sale of machinery used in operation, §27-65-20.
  Digital products.
    Selling, renting, leasing specified products, §27-65-26.
  Floating structures.
    Selling tangible personal property or performing construction upon, §27-65-18.
  Miscellaneous businesses, §27-65-23.
  Public utilities, §27-65-19.
  Telegraph or telephone business, §27-65-19.
  Wholesale and retail sales of tangible personal property, §27-65-17.
Receipts for remittances, §27-65-73.
Records.
  Preservation, §27-65-79.
  Taxpayers, §27-65-43.
Refineries.
  Construction activities, §27-65-24.
    Defined, §27-65-24.
  Defined, §27-65-24.
  Manufacturing and processing machinery used at, §27-65-24.
Refrigerating equipment repairs.
  Rate of tax, §27-65-23.
Refunds.
  Overpayment, §27-65-53.
Renting or leasing personal property.
  Rate of tax, §27-65-23.
Retail rate on purchases.
  Payment by taxpayer failing to obtain sales tax permit, §27-65-3.
Returns, §27-65-33.
  Confidentiality, §27-65-81.
    Release of certain information, circumstances, §27-65-81.
  Failure to file.
    Assessment, notice, §27-65-35.
    Penalties, §27-65-33.
  False or fraudulent returns unlawful, §27-65-85.
  Manufacturers selling at retail, §27-65-17.

SALES TAX —Cont'd
Returns —Cont'd
  Previously unregistered taxpayers, §27-65-3.
Revision of tax assessed.
  Application for revision, §27-65-42.
Rights of taxpayers, §27-65-43.
Rules and regulations, §27-65-93.
Sale defined, §27-65-3.
Sale of business.
  Liability of seller and purchaser, §27-65-55.
Sale of motor vehicle by individual, §27-65-201.
Sales person soliciting orders to filled outside state.
  Doing business, §27-65-9.
Saving provision.
  Prior rights or actions not affected by provisions, §27-65-95.
Schools and education.
  Exemptions.
    Sales for school or school organization fundraisers, §27-65-111.
    Sales to schools, §§27-65-105, 27-65-111.
Sheriffs.
  Warrant for collection of tax, §27-65-59.
    Execution of warrant, §27-65-63.
    Jeopardy assessment and warrant, §§27-65-61, 27-65-63.
    Sheriff not personally liable, §27-65-69.
Shoe repair.
  Rate of tax, §27-65-23.
Short title of law, §27-65-1.
Situs of sales.
  For purposes of distributing taxes to municipalities, §27-65-3.
Situs of wholesale sales, §27-65-3.
Small businesses.
  Liability of certain stockholders of small business corporations, §27-65-55.
Special agents, §27-65-91.
Special counsel.
  Employment, assistance in enforcement, §27-65-87.
Special fuel tax.
  Administrative provisions of sales tax law.
    Applicability, §27-55-537.
State of Mississippi.
  Exemptions.
    Sales to state, §27-65-105.

SALES TAX —Cont'd
Statute of limitations.
  Collection of taxes due, §27-65-42.
Storage lockers.
  Rate of tax, §27-65-23.
Subpoenas.
  Compelling attendance of witnesses, §27-65-85.
Summons and process.
  Witnesses.
    Compelling attendance by commissioner, §27-65-85.
Tangible personal property.
  Defined, §27-65-3.
  Floating structures.
    Selling upon certain floating structures, §27-65-18.
  Wholesale and retail sales, §27-65-17.
Taxes due and unpaid.
  Assessment, notice, §27-65-37.
Tax holiday.
  Clothing and footwear, §27-65-111.
Taxpayer defined, §27-65-3.
Telecommunications equipment.
  Exemption.
    Sales of equipment to be installed in tier one, two and three areas, §27-65-101.
Telecommunications services, §27-65-19.
Telegraph and telephone companies.
  Levy of tax, §27-65-19.
Telephone answering or paging services.
  Rate of tax, §27-65-23.
Termite or pest control service.
  Rate of tax, §27-65-23.
Tin and sheet metal shops.
  Rate of tax, §27-65-23.
Tire repair or recapping.
  Rate of tax, §27-65-23.
Tourism sales tax incentive fund.
  Deposit of tax revenue, §27-65-75.
Trade-in taken as part payment.
  Gross proceeds of sale, §27-65-3.
Uniform sales and use tax administration law, §§27-68-1 to 27-68-17.
United States.
  Exemptions.
    Sales to United States, §27-65-105.
United Way, sales of items to, exemption, §27-65-111.
Unpaid taxes.
  Assessment, notice, §27-65-37.

SALES TAX —Cont'd
Use tax generally, §§27-67-1 to 27-67-33.
Vending machines.
  Food and drink to be sold by.
    Rate of tax, §27-65-17.
Warehouse.
  Rate of tax, §27-65-23.
Warrant for collection of tax, §27-65-59.
  Execution of warrant, §27-65-63.
  Jeopardy assessment and warrant, §27-65-61.
    Execution of warrant, §27-65-63.
  Personal liability of sheriff or special agent.
    Not personally liable, §27-65-69.
Welding.
  Rate of tax, §27-65-23.
Wheelchairs and lifts installed in private carriers.
  Rate of tax, §27-65-17.
Wholesalers.
  Defined, §27-65-5.
Wholesale sales, §27-65-5.
Witnesses.
  Powers of commissioner as to witnesses, §27-65-85.
Woodworking.
  Rate of tax, §27-65-23.
Zoological parks.
  Sales of items to, sales tax exemption, §27-65-111.

SCHOOL BUSES.
Private or public individuals or entities for transportation services.
  Sales tax exemption, §27-65-105.

SCHOOL DISTRICTS.
Emergency aid to local governments loan and grant program, §27-107-321.
Gasoline, special fuel and compressed gas excise taxes.
  Exemption, §27-55-12.
Regional educational service agencies (ESA).
  Sales tax exemption, §27-65-105.
Taxes.
  Reports of taxing entities, §27-101-21.

SCHOOLS AND EDUCATION.
Regional educational service agencies (ESA).
  Sales tax exemption, §27-65-105.

SCHOOLS AND EDUCATION —Cont'd
Sales tax.
  Exemptions.
    Sales for school or school organization fundraisers, §27-65-111.
    Sales to schools, §§27-65-105, 27-65-111.

SEARCHES AND SEIZURES.
Alcoholic beverages.
  Light wine and beer tax.
    Contraband light wine and beer.
      Confiscation, §27-71-335.
Light wine and beer tax.
  Contraband light wine and beer.
    Confiscation, §27-71-335.
Tobacco tax.
  Unlawful sale.
    Search warrant, §27-69-59.

SEARCH WARRANTS.
Tobacco tax.
  Unlawful sale, §27-69-59.

SECOND AMENDMENT WEEKEND TAX HOLIDAY.
Sales tax exemptions for firearms and ammunition sold during, §27-65-111.

SECRETARY OF STATE.
Iran divestment act of 2015.
  Notice to attorney general describing provisions, §27-106-23.

SEIZURE.
Gasoline tax.
  Delinquent taxes.
    Writ of summons and seizure, §27-55-43.
Light wine and beer tax.
  Contraband light wine and beer.
    Confiscation, §27-71-335.
Liquefied compressed gas tax.
  Writ of summons and seizure, §27-59-45.
Lubricating oil tax.
  Writ of summons and seizure, §27-57-31.
Special fuel tax.
  Delinquent taxes.
    Writ of summons and seizure, §27-55-551.
Tobacco tax.
  Commodities subject to confiscation, §27-69-53.

SEIZURE —Cont'd
Tobacco tax —Cont'd
  Compromise of confiscation, §27-69-57.
  Procedure when goods are confiscated, §27-69-55.

SEMITRAILERS.
Interstate commercial carriers motor fuel tax, §§27-61-1 to 27-61-33.
Sales tax.
  Exemptions, §27-65-101.

SEPARATE ROAD DISTRICTS.
Taxation.
  Reports of taxing entities, §27-101-21.

SEQUESTRATION, WRIT OF.
Gasoline tax, §27-55-43.
Liquefied compressed gas tax, §27-59-45.
Lubricating oil tax, §27-57-31.
Special fuel tax.
  Impounding of special fuel on which tax or penalty owed, §27-55-551.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.
Taxpayer appeals.
  Chancery court appeals.
    Issuance of summons to respondent, §27-77-7.
      Permit, tag, title, IFTA license, §27-77-13.

SETTLEMENT.
Tobacco tax.
  Confiscation of tobacco, §27-69-57.

SHERIFFS.
Sales tax.
  Warrant for collection of tax, §27-65-59.
    Execution of warrant, §27-65-63.
    Jeopardy assessment and warrant, §§27-65-61, 27-65-63.
    Sheriff not personally liable, §27-65-69.

SHIPS.
Cruise vessels.
  Privilege licenses, §§27-109-1 to 27-109-15.

SHOE REPAIRING.
Sales tax.
  Levy on business, §27-65-23.

SHOES.
Sales tax holiday.
  Clothing and footwear, §27-65-111.

SHOW CAUSE ORDERS.
Sales taxes.
  Petition for citation, failure to obey summons, §27-65-85.

SISTERS.
Tax refunds due to deceased individual, §27-73-9.

SMALL BUSINESSES.
Sales tax.
  Liability of certain stockholders of small business corporations, §27-65-55.

SMOKELESS TOBACCO.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.

SMOKING.
Tobacco tax, §§27-69-1 to 27-69-79.

SNUFF.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.

SOVEREIGN IMMUNITY.
Tax refunds.
  Oil, gas and mineral ad valorem taxes.
    Withdrawal of consent to suits for refunds, §27-73-13.

SPECIAL FUEL TAX, §§27-55-501 to 27-55-569.
Accidental mixing of fuels, §27-55-533.
Actions.
  Institution of proceedings by commission, §27-55-551.
  Limitation of actions by state for recovery of additional amounts, §27-55-545.
Administration of provisions, §27-55-501.
Apportionment of tax, §27-55-561.
Armed forces.
  Defined, §27-55-505.
  Exemption of fuel sold to United States government for use of, §27-55-527.
Bonds, surety.
  Distributor permit.
    Applicant, §27-55-507.
Citation of law, §27-55-501.
Credits.
  Accidental mixing of fuels, §27-55-533.

SPECIAL FUEL TAX —Cont'd
Criminal penalties.
  Distributor of special fuel.
    Operating without permit, §27-55-509.
  Highway construction equipment.
    Unlawful purchase of untaxed fuel for use in, §27-55-569.
  Inspections.
    Refusal to allow inspection, §27-55-547.
  Metering requirement violations, §27-55-543.
Definitions, §27-55-505.
Depositories.
  Funds placed in depositories, §27-55-555.
Diesel fuel.
  Dyed diesel fuel.
    Defined, §27-55-505.
    Levy of excise tax, §27-55-521.
    Nonhighway purposes.
      Regulation of dyed diesel fuel and kerosene to be used for, §27-55-531.
    Regulation of sale, §27-55-517.
    Use in motor vehicle unlawful, §27-55-539.
  Permits.
    Marine diesel fuel or kerosene permit, §27-55-515.
  Undyed diesel fuel.
    Defined, §27-55-505.
    Levy of excise tax, §27-55-521.
    Storage.
      Tax on undyed diesel fuel held in storage, §27-55-567.
Distributor of special fuel.
  Bonded distributor of special fuel.
    Defined, §27-55-505.
    Monthly report and remittance, §27-55-523.
    Person not bonded as distributor of special fuel.
      Applicability of provisions that apply to bonded distributors, §27-55-525.
  Defined, §27-55-505.
  Levy of excise tax on, §§27-55-519, 27-55-521.
  Monthly report and remittance, §27-55-523.
  Permit, §§27-55-507 to 27-55-513.
    Application, §27-55-507.
    Bond of applicant, §27-55-507.

SPECIAL FUEL TAX —Cont'd
Distributor of special fuel —Cont'd
  Permit —Cont'd
    Issuance.
      Rules and regulations, §27-55-513.
    Penalty for operating without permit, §27-55-509.
    Revocation, §27-55-511.
  Records.
    Retention, §27-55-545.
Evidence.
  Exemptions, §27-55-527.
  Product transported, §27-55-559.
  Sales by distributors, §27-55-545.
Exchange of information with other states, §27-55-557.
Exemptions, §27-55-527.
Highway construction equipment.
  Unlawful purchase of untaxed fuel for use in, §27-55-569.
Inspections, §27-55-547.
Institution of proceedings for violations, §27-55-551.
Legislative declaration, §27-55-503.
Levy of excise tax, §§27-55-519, 27-55-521.
Levy of tax on undyed diesel fuel held in storage, §27-55-567.
Liens, §27-55-551.
Limitation of actions.
  Actions by state for recovery of additional amounts, §27-55-545.
Lost or destroyed fuel.
  Credit or refund, §27-55-535.
Metering requirements, §27-55-543.
Nonhighway purposes.
  Dyed diesel fuel and kerosene.
    Regulation of use for nonhighway purposes, §27-55-531.
Notice.
  Intent to import special fuel, §27-55-559.
Payment.
  Monthly report and remittance, §27-55-523.
Penalties.
  Notice of intent to import special fuel.
    Transportation of special fuel without having given, §27-55-559.
  Prior law.
    Provisions not to release or extinguish penalty incurred under, §27-55-565.
Permits.
  Distributor of special fuel, §§27-55-507 to 27-55-513.

SPECIAL FUEL TAX —Cont'd
Permits —Cont'd
  Marine diesel fuel or kerosene permit, §27-55-515.
Prior law.
  Effect on, §27-55-565.
Purpose of provisions, §27-55-503.
Rate of excise tax, §§27-55-519, 27-55-521.
Rate of tax on undyed diesel fuel held in storage, §27-55-567.
Records.
  Retention of records by distributors and other persons, §27-55-545.
Refunds.
  Lost or destroyed fuel, §27-55-535.
  Taxes erroneously or illegally collected, §27-55-553.
Reports.
  Bonded distributor of special fuel.
    Monthly report, §27-55-523.
  Transportation reports, §27-55-541.
Rules and regulations, §27-55-563.
  Distributor permit.
    Issuance, §27-55-513.
  Dyed diesel fuel.
    Sale, §27-55-517.
Sales tax law.
  Applicability of administrative provisions, §27-55-537.
Saving provision.
  Effect of prior law, §27-55-565.
Searches and seizures.
  Delinquent taxes.
    Writ of summons and seizure, §27-55-551.
Sequestration, writ of.
  Impounding of special fuel on which tax or penalty owed, §27-55-551.
Statute of limitations.
  Actions by state for recovery of additional amounts, §27-55-545.
Storage.
  Undyed diesel fuel held in storage, §27-55-567.
Title of law, §27-55-501.
Vessels.
  Inspection of vessel transporting special fuel, §27-55-547.
Writ of summons and seizure, §27-55-551.

SPECIAL FUNDS TRANSFER FUND, §27-104-14.

STATE BOARD OF TAX APPEALS.
Appellate review of department of revenue actions.
  Generally, §§27-77-1 to 27-77-19.

STATE BUDGET, §§27-103-101 to 27-103-301.

STATE DEPARTMENT OF EDUCATION.
Budget.
  Performance budgeting and strategic planning.
    Evaluation of performance and review of plans, exemption from requirements, §27-103-155.
    Inventory of programs and activities from certain state departments, §27-103-159.
    Performance measurement data and targets, exemption from requirements, §27-103-153.

STATE DEPARTMENT OF HEALTH.
Budget.
  Performance budgeting and strategic planning.
    Evaluation of performance and review of plans, exemption from requirements, §27-103-155.
    Inventory of programs and activities from certain state departments, §27-103-159.
    Performance measurement data and targets, exemption from requirements, §27-103-153.

STATE DEPARTMENTS AND AGENCIES.
Accountability and transparency act.
  Expenditure of state funds and bond proceeds.
    Website, §§27-104-151 to 27-104-167.
Annual reports, §§27-101-1 to 27-101-5.
  Copies.
    Publication of additional copies, §27-101-5.
  Electronic publication, §27-101-3.
  Electronic transmission, §27-101-1.
  Executive summaries of report, §27-101-1.
  Publication of additional copies, §27-101-5.
  Time for closing certain annual reports, §27-101-1.
  Transmission of reports, §27-101-3.

STATE DEPARTMENTS AND AGENCIES —Cont'd
Budgets.
  Allotment period, §27-104-17.
  Applicability to funds granted or allotted under act of congress, §27-104-27.
    Applications for, §27-104-21.
  Availability of funds after approval of operating budget, §27-104-19.
  Budget requests, §§27-103-129, 27-103-131.
  Budget transparency and simplification act of 2016, §§27-104-201 to 27-104-205.
  Estimates.
    Revision of budget estimates for certain agencies, §§27-104-13, 27-104-15.
    Time for filing, §27-104-17.
  Expenditure by agencies, §27-104-11.
  Federal funds.
    Applicability of provisions to funds granted or allotted under act of congress, §27-104-27.
    Applications for, §27-104-21.
    Revenue maximization contracts, §27-104-81.
  Indemnification.
    Revenue maximization contracts.
      Federal funds, §27-104-81.
  Information to be furnished by revenue-producing agencies, §27-103-135.
  Injunctive action against noncompliance with provisions, §27-104-29.
  Obligations or indebtedness incurred in name of agency.
    Payment of claims from prior fiscal year, §27-104-25.
  Reports to legislative budget office, §§27-103-107, 27-103-109.
  Revenue maximization contracts.
    Federal funds, §27-104-81.
  Revision of budget estimates for certain agencies, §27-104-13.
    Hearings, §27-104-15.
    Revisions or restoration, prohibition, §27-104-14.
  State fiscal officer.
    Submission of agency operating budget to, §27-104-9.
  Statewide cost allocation fund, §27-104-21.

STATE DEPARTMENTS AND AGENCIES —Cont'd

Budgets —Cont'd

Visitation of state agencies by director of legislative budget office, §27-103-133.

Checks.

Acceptance by banks of checks payable to state agency, §27-105-37.

Collections assistance.

Finance and administration department, §27-104-3.

Expenditure of state funds and bond proceeds.

Website.

Mississippi transparency and accountability act, §§27-104-151 to 27-104-167.

Federal funds.

Budgets.

Revenue maximization contracts, §27-104-81.

Fees and charges.

Budget transparency and simplification act of 2016, §§27-104-201 to 27-104-205.

Finance and administration department, §§27-104-1 to 27-104-109.

Financial statements.

Annual financial statements, §27-104-4.

Mississippi transparency and accountability act.

Expenditure of state funds and bond proceeds.

Website, §§27-104-151 to 27-104-167.

Motor vehicles.

Emergency requests for vehicle purchases, §27-103-129.

Justification for vehicles purchased, §27-103-129.

Reports, vehicles in possession of agency, §27-103-129.

Obligations or indebtedness incurred in name of agency, §27-104-25.

Records.

Fiscal affairs, §27-104-23.

Reports.

Annual reports, §§27-101-1 to 27-101-5.

STATE DEPARTMENTS AND AGENCIES —Cont'd

Website.

Expenditure of state funds and bond proceeds.

Mississippi transparency and accountability act, §§27-104-151 to 27-104-167.

STATE DEPOSITORY COMMISSION, §§27-105-1 to 27-105-37.

Composition, §27-105-35.

Definition of banks, §27-105-3.

Depositories for state funds.

Applications for keeping state funds, §27-105-9.

Bonds as security for state funds, §27-105-7.

Checks issued by state treasurer.

Failure of depository to pay, §27-105-25.

Commission issued depository, §§27-105-11, 27-105-13.

Compensation for expense in maintaining deposit accounts, §27-105-1.

Criminal offenses, §§27-105-27, 27-105-29.

Interest.

Deposits at interest of certain funds with, §27-105-21.

Loan or removal of state funds unlawful, §27-105-27.

Qualification as public funds depository, §27-105-5.

Participation in public funds guaranty pool, §27-105-6.

Receipts, §27-105-19.

Governor and treasurer to count depository receipts as cash, §27-105-31.

Duties, §27-105-35.

Employees, §27-105-17.

Meetings, §27-105-35.

Records.

Proceedings of commission, §27-105-15.

Rules and regulations, §27-105-17.

Secretary, §27-105-17.

State treasurer.

Term to mean state treasurer, §27-105-1.

STATE FISCAL OFFICER.
Accountability and transparency act.
  Compliance examination, §27-104-158.
Budgets.
  Agency operating budgets.
    Submission to, §27-104-9.
Duties.
  Duties when acting through insurance division, §27-104-31.
Executive director of finance and administration department to be, §27-104-6.
  Generally, §§27-104-5, 27-104-101.
Powers.
  Powers when acting through insurance division, §27-104-31.
References deemed to mean finance and administration executive director, §27-104-6.
Reports.
  Annual financial statements by agencies.
    Consolidated report, §27-104-4.
Sales tax returns and information.
  Release of information, circumstances, §27-65-81.

STATE OF MISSISSIPPI.
Budget, §§27-103-101 to 27-103-301.
Sales tax exemptions.
  Sales to state, §27-65-105.

STATE-OWNED MOTOR VEHICLES.
Purchase.
  Emergency purchases, requests, §27-103-129.
  Justification required, §27-103-129.
Vehicles in agency's possession.
  Report, §27-103-129.

STATE TREASURER.
Checks.
  Depositories for state funds.
    Failure to pay treasurer's check, §27-105-25.
Depository receipts.
  Counting as cash, §27-105-31.
Duties.
  Deposit and investment of excess state funds, §27-105-33.
Excess state funds.
  Deposit and investment, §27-105-33.
Investments.
  Excess state funds, §27-105-33.
Iran divestment act of 2015.
  Limitation of investments, §27-106-13.
    Exception, §27-106-15.

STATE TREASURER —Cont'd
State depository commission.
  General provisions, §§27-105-1 to 27-105-37.
  Term to mean state treasurer, §27-105-1.

STATUTE OF LIMITATIONS.
Gasoline tax.
  Recovery by state of additional amounts, §27-55-37.
Liquefied compressed gas tax.
  Recovery by state of additional amounts, §27-59-25.
    User tax, §27-59-315.
Lubricating oil tax.
  Recovery by state of additional amounts, §27-57-25.
Sales tax.
  Collection of taxes due, §27-65-42.
Special fuel tax.
  Actions by state for recovery of additional amounts, §27-55-545.

STORAGE LOCKERS.
Sales tax, §27-65-23.

STRAW.
Sales tax exemption.
  Agricultural products, §27-65-103.

STREET VENDORS.
Salesmen's tax, §§27-67-501 to 27-67-511.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.

SUBLEASES.
Department of finance and administration.
  Power to enter into, §27-104-107.

SUBPOENAS.
Cruise vessels.
  Privilege licenses, §27-109-1.
Sales tax.
  Compelling attendance of witnesses, §27-65-85.
Taxpayer appeals, §27-77-19.

SUBSTANCE ABUSE.
Alcoholism treatment and rehabilitation fund.
  Alcoholic beverage taxes.
    Excise taxes, §27-71-7.
Nonprofit organizations providing residential rehabilitation for drug and alcohol dependency.
  Sales tax exemptions, §27-65-111.

SUBSTANCE ABUSE —Cont'd
Sales tax exemptions.
  Nonprofit organizations providing residential rehabilitation for drug and alcohol dependency, §27-65-111.

SUMMONS.
Sales tax.
  Witnesses.
    Compelling attendance by commissioner, §27-65-85.
Taxpayer appeals.
  Chancery court appeals.
    Issuance to respondent, §27-77-7.
      Permit, tag, title, IFTA license, §27-77-13.

SURVEYS AND SURVEYORS.
Sales tax.
  Levy on certain services, §27-65-23.

SWIMMING POOLS.
Sales tax on amusements.
  Activities exempted, §27-65-22.

T

TAXATION.
Alcoholic beverage taxes.
  Breweries, §§27-71-501 to 27-71-511.
  General provisions, §§27-71-1 to 27-71-31.
  Light wine and beer, §§27-71-301 to 27-71-349.
Appeals by taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.
  Ad valorem taxes.
    Inapplicability of chapter, §27-77-17.
  Assessment, refund, tag penalty, §§27-77-5, 27-77-7.
    Bond accompanying petition to chancery court, §27-77-7.
    Burden of proof.
      Chancery court appeals, §27-77-7.
    Chancery court appeals, §27-77-7.
    Changing contested actions after appeal filed.
      Authority of department, §27-77-5.
    Consolidation of appeals.
      Agency and taxpayer filing appeal in chancery court, §27-77-7.
    Definitions, §27-77-1.
    De novo trial.
      Chancery court appeals, §27-77-7.

TAXATION —Cont'd
Appeals by taxpayers aggrieved by department action —Cont'd
  Assessment, refund, tag penalty —Cont'd
    Department interpretation of law and regulations.
      Deference to, chancery court appeals, §27-77-7.
    Filing appeals.
      Board of review appeals, §27-77-5.
      Board of tax appeals, §27-77-5.
      Chancery court appeals, §27-77-7.
    Findings.
      Board of review, §27-77-5.
      Board of tax appeals, §27-77-5.
    Hearing.
      Board of review, §27-77-5.
      Board of tax appeals, §27-77-5.
      Chancery court appeals, §27-77-7.
    Involuntary withdrawal, §27-77-5.
    Notice of findings.
      Board of review, §27-77-5.
      Board of tax appeals, §27-77-5.
    Notice of hearing.
      Board of review appeals, §27-77-5.
      Board of tax appeals, §27-77-5.
    Overpayment.
      Refunding or crediting to taxpayer pending outcome of appeal, §27-77-7.
    Payment of amount ordered paid, §27-77-5.
      Under protest, in lieu of bond requirement, §27-77-7.
    Petition in chancery court, §27-77-7.
    Summons to respondent.
      Issuing, chancery court appeals, §27-77-7.
    Time.
      Filing appeals.
        Board of review appeals, §27-77-5.
        Board of tax appeals, §27-77-5.
        Chancery court appeals, §27-77-7.
    Venue.
      Petition in chancery court, §27-77-7.
    Voluntary withdrawal, §27-77-5.
    Withdrawal of appeal, §27-77-5.
  Board of review, §27-77-3.
    Assessment, refund, tag, penalty, §27-77-5.
    Permit, tag, title.
      Suspension, surrender, seizure, revocation, §27-77-9.

TAXATION —Cont'd

Appeals by taxpayers aggrieved by department action —Cont'd

- Board of tax appeals.
  - Assessment, refund, tag, penalty, §27-77-5.
  - Permit, tag, title.
    - Suspension, surrender, seizure, revocation, §27-77-9.
- Chancery court appeals.
  - Assessment, refund, tag penalty, §27-77-7.
  - Permit, tag, title, IFTA license, §27-77-13.
- Confidentiality of information, exceptions, §27-77-15.
- Definitions, §27-77-1.
- Disclosure of information, §27-77-15.
- Enforcement of provisions.
  - Rules and regulations, §27-77-19.
- Failure of board of tax appeals to issue order.
  - Considered as denial of relief, §27-77-5.
- Homestead exemption law of 1946.
  - Inapplicability of chapter, §27-77-17.
- IFTA license.
  - Appeal to chancery court, §27-77-13.
    - Consolidation of appeals, §27-77-13.
    - Payment prior to filing, §27-77-13.
    - Petition, §27-77-13.
    - Preparation of record, costs, deficiency, §27-77-13.
    - Scope of review, §27-77-13.
    - Summons to respondent, §27-77-13.
    - Supreme court, right of appeal to, §27-77-13.
    - Time.
      - Filing petition, §27-77-13.
    - Venue, §27-77-13.
  - Application denied, §27-77-11.
    - Appeal to board of tax appeals, §27-77-11.
    - Copy of order, §27-77-11.
    - Failure to attend hearing, §27-77-11.
    - Filing appeal, §27-77-11.
    - Finality of order, §27-77-11.
    - Hearing, §27-77-11.
    - Notice of denial, §27-77-11.
    - Notice of hearing, §27-77-11.
    - Time.
      - Filing appeal, §27-77-11.

TAXATION —Cont'd

Appeals by taxpayers aggrieved by department action —Cont'd

- IFTA license —Cont'd
  - Application denied —Cont'd
    - Withdrawal of appeal, §27-77-11.
  - Defined, §27-77-1.
  - Interstate commercial carriers motor fuel tax law license or decal.
    - IFTA license defined, §27-77-1.
  - Revocation or suspension, §27-77-12.
    - Appeal to board of tax appeals, §27-77-12.
    - Entry of order, §27-77-12.
    - Failure to attend hearing, §27-77-12.
    - Finality of order, §27-77-12.
    - Hearing, §27-77-12.
    - Notice of hearing, §27-77-12.
    - Notice of intent, §27-77-12.
    - Request for hearing, §27-77-12.
    - Time.
      - Appeal to board of tax appeals, §27-77-12.
      - Request for hearing, §27-77-12.
    - Withdrawal of appeal, §27-77-12.
    - Withdrawal of request for hearing, §27-77-12.
- Inapplicability of chapter, §27-77-17.
- IRP registration.
  - Appeal to chancery court, §27-77-13.
    - Consolidation of appeals, §27-77-13.
    - Payment prior to filing, §27-77-13.
    - Petition, §27-77-13.
    - Preparation of record, costs, deficiency, §27-77-13.
    - Scope of review, §27-77-13.
    - Summons to respondent, §27-77-13.
    - Supreme court, right of appeal to, §27-77-13.
    - Time.
      - Filing petition, §27-77-13.
    - Venue, §27-77-13.
  - Application denied, §27-77-11.
    - Appeal to board of tax appeals, §27-77-11.
    - Copy of order, §27-77-11.
    - Failure to attend hearing, §27-77-11.
    - Filing appeal, §27-77-11.
    - Finality of order, §27-77-11.
    - Hearing, §27-77-11.
    - Notice of denial, §27-77-11.

TAXATION —Cont'd
Appeals by taxpayers aggrieved by department action —Cont'd
  IRP registration —Cont'd
    Application denied —Cont'd
      Notice of hearing, §27-77-11.
      Time.
        Filing appeal, §27-77-11.
      Withdrawal of appeal, §27-77-11.
    Defined, §27-77-1.
    Revocation or suspension, §27-77-12.
      Appeal to board of tax appeals, §27-77-12.
      Entry of order, §27-77-12.
      Failure to attend hearing, §27-77-12.
      Finality of order, §27-77-12.
      Hearing, §27-77-12.
      Notice of hearing, §27-77-12.
      Notice of intent, §27-77-12.
      Request for hearing, §27-77-12.
      Surrender of IRP credentials, §27-77-12.
      Time.
        Appeal to board of tax appeals, §27-77-12.
        Request for hearing, §27-77-12.
      Withdrawal of appeal, §27-77-12.
      Withdrawal of request for hearing, §27-77-12.
  Local option alcoholic beverage control law.
    Inapplicability of chapter, §27-77-17.
  Native wine law.
    Inapplicability of chapter, §27-77-17.
  Open meeting law exemption, §27-77-15.
  Permit, tag, title.
    Appeal to chancery court, §27-77-13.
      Consolidation of appeals, §27-77-13.
      Payment prior to filing, §27-77-13.
      Petition, §27-77-13.
      Preparation of record, costs, deficiency, §27-77-13.
      Scope of review, §27-77-13.
      Summons to respondent, §27-77-13.
      Supreme court, right of appeal to, §27-77-13.
      Time.
        Filing petition, §27-77-13.
      Venue, §27-77-13.
    Application denied, §27-77-11.
      Appeal to board of tax appeals, §27-77-11.

TAXATION —Cont'd
Appeals by taxpayers aggrieved by department action —Cont'd
  Permit, tag, title —Cont'd
    Application denied —Cont'd
      Copy of order, §27-77-11.
      Failure to attend hearing, §27-77-11.
      Filing appeal, §27-77-11.
      Finality of order, §27-77-11.
      Hearing, §27-77-11.
      Notice of denial, §27-77-11.
      Notice of hearing, §27-77-11.
      Time.
        Filing appeal, §27-77-11.
      Withdrawal of appeal, §27-77-11.
    Suspension, surrender, seizure, revocation, §27-77-9.
      Appeal to board of tax appeals, §27-77-9.
      Copy of order, §27-77-9.
      Failure to attend hearing, §27-77-9.
      Findings and decision, §27-77-9.
      Involuntary withdrawal, §27-77-9.
      Notice of intent, §27-77-9.
      Notice of show cause hearing, §27-77-9.
      Request for hearing, §27-77-9.
      Show cause hearing, §27-77-9.
      Time.
        Request for hearing, §27-77-9.
        Show cause hearing, §27-77-9.
      Timeliness of appeal, delivery to board of review or board of tax appeals, §27-77-9.
      Withdrawal of appeal, §27-77-9.
  Public records.
    Information exempt from disclosure, §27-77-15.
  Rules and regulations, §27-77-19.
  Subpoenas, §27-77-19.
Attorney general.
  Tax reciprocity law, §§27-75-13, 27-75-15.
Board of tax appeals.
  Appeals by taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.
  Executive director.
    Subpoenas under commissioner's signature and seal.
      Taxpayer appeals, §27-77-19.
Confidentiality of tax returns.
  Sales tax, §27-65-81.

TAXATION —Cont'd
County port authorities.
  Sales tax levy, §27-65-20.
Department of revenue.
  Alcoholic beverages.
    Taxes.
      Administration of provisions, §27-71-1.
      Generally, §§27-71-1 to 27-71-31.
      Light wine and beer, §§27-71-301 to 27-71-349.
  Appeals by taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.
  Board of review, §27-77-3.
  Cigarette manufacturers.
    Nonsettling manufacturers.
      Fee on sale, use, consumption, distribution of cigarettes, registration, §§27-70-1 to 27-70-23.
  Commissioner of revenue.
    Subpoenas.
      Taxpayer appeals, §27-77-19.
  Cruise vessels.
    Privilege licenses.
      Consideration of applications, §27-109-7.
      Powers and duties, §27-109-1.
      Rules and regulations, §27-109-3.
  Gasoline tax.
    Administration of provisions, §27-55-1.
    General provisions, §§27-55-1 to 27-55-65.
  Interstate commercial carriers motor fuel tax.
    Administration of provisions, §27-61-1.
    Compacts or agreements with other states, §27-61-20.
    General provisions, §§27-61-1 to 27-61-33.
    Reciprocal agreements with neighboring states, §27-61-21.
  Liquefied compressed gas tax.
    Administration of provisions, §27-59-1.
    General provisions, §§27-59-1 to 27-59-325.
    Inspections, §27-59-41.
    Institution of proceedings, §27-59-45.
    Powers, §§27-59-37, 27-59-45.
      Inspections, §27-59-41.

TAXATION —Cont'd
Department of revenue —Cont'd
  Liquefied compressed gas tax —Cont'd
    User tax.
      Exchange of information with other states, §27-59-323.
      Powers, §27-59-313.
      Rules and regulations, §27-59-325.
  Lubricating oil tax.
    Actions, power to institute, §27-57-31.
    Administration of provisions, §27-57-1.
    General provisions, §§27-57-1 to 27-57-45.
    Powers, §§27-57-21, 27-57-31.
  Salesmen's tax.
    Administration of provisions by chairman, §27-67-511.
    Collection by chairman, §27-67-509.
  Sales tax.
    Administration of provisions, §27-65-87.
    Generally, §§27-65-1 to 27-65-231.
    Returns.
      Release of information to department employees, §27-65-81.
  Special fuel tax.
    Administration of provisions, §27-55-501.
    Depositories.
      Funds collected by department, §27-55-555.
    Exchange of information with other states, §27-55-557.
    Generally, §§27-55-501 to 27-55-569.
    Inspections, §27-55-547.
    Institution of proceedings for violations, §27-55-551.
    Rules and regulations, §27-55-563.
      Distributor permit.
        Issuance, §27-55-513.
      Dyed diesel fuel.
        Sale, §27-55-517.
    Writ of summons and seizure, §27-55-551.
  Tobacco tax.
    Generally, §§27-69-1 to 27-69-79.
  Use tax.
    Chairman.
      Collection of tax, §27-67-17.
      Extensions of time, §27-67-19.
  Witnesses.
    Cruise vessels.
      Privilege licenses, §27-109-1.

TAXATION —Cont'd
Depositories.
  Local governments' depositories, §§27-105-301 to 27-105-371.
  State depository commission, §§27-105-1 to 27-105-37.
Excise taxes.
  Reciprocal collection of taxes, §§27-75-1 to 27-75-17.
  Tax refunds, §§27-73-1 to 27-73-13.
Gasoline tax.
  General provisions, §§27-55-1 to 27-55-65.
Interstate commercial carriers motor fuel tax.
  General provisions, §§27-61-1 to 27-61-33.
Liquefied compressed gas tax.
  General provisions, §§27-59-1 to 27-59-325.
Lubricating oil.
  General provisions, §§27-57-1 to 27-57-45.
Privilege taxes.
  Tax refunds, §§27-73-1 to 27-73-13.
Reciprocal collection of taxes, §§27-75-1 to 27-75-17.
  Attorney general.
    Employment of foreign attorneys to collect taxes, §27-75-15.
    Power to bring suits in foreign state to collect taxes, §27-75-13.
  Collection agencies.
    Use of out-of-state collection agencies to collect delinquent taxes, §27-75-16.
  Construction and interpretation.
    Liberal construction of law, §27-75-17.
  Definition of taxes, §27-75-3.
  Foreign attorneys.
    Employment to collect taxes, §27-75-15.
  Other states.
    Certificate of foreign state conclusive proof of authority to bring suit, §27-75-11.
    Reciprocal right to enforce judgment, §§27-75-7, 27-75-9.
    Reciprocal right to sue in Mississippi, §§27-75-5, 27-75-9.
  Out-of-state collection agencies.
    Use to collect delinquent taxes, §27-75-16.
  Title of law, §27-75-1.

TAXATION —Cont'd
Salesmen's tax, §§27-67-501 to 27-67-511.
Sales tax.
  General provisions, §§27-65-1 to 27-65-111.
  Rental of motor vehicles, §27-65-231.
  Sale of motor vehicles by individuals, §27-65-201.
  Tribal tax by Choctaw Indians, §§27-65-211 to 27-65-221.
Special fuel tax, §§27-55-501 to 27-55-569.
Tax reciprocity law, §§27-75-1 to 27-75-17.
Tobacco equity tax, §27-70-5.
Tobacco tax.
  General provisions, §§27-69-1 to 27-69-79.
Use tax.
  General provisions, §§27-67-1 to 27-67-33.

TAXATION INFORMATION CONFIDENTIALITY.
Confidentiality of tax returns.
  Sales tax, §27-65-81.

TAX COLLECTORS.
Auditor of public accounts.
  Settlements with auditor of public accounts, §27-105-23.
County treasury.
  Settlement with county treasury, §27-105-325.
Deposits in county depository, §27-105-337.
Use tax.
  Duties as to tax, §27-67-5.
  Liability for tax required to be collected, §27-67-5.

TAX EXEMPTIONS.
Facilitating business rapid response to state declared disasters.
  Out-of-state businesses conducting operations in state related to declared disaster.
    Exemptions from certain tax and licensing provisions, §27-113-7.
Gasoline tax, §§27-55-12, 27-55-19.
Liquefied compressed gas tax, §27-59-12.
Lubricating oil tax, §27-57-17.
Special fuel tax, §27-55-527.

TAX HOLIDAY.
Sales tax.
  Clothing and footwear, §27-65-111.

TAXPAYER APPEALS.
Appellate review of department actions, §§27-77-1 to 27-77-19.

TAX RECIPROCITY LAW, §§27-75-1 to 27-75-17.

TAX REFUNDS, §§27-73-1 to 27-73-13.
Appellate review.
  Taxpayers aggrieved by department actions, §§27-77-1 to 27-77-19.
Authority to issue refunds, §27-73-7.
Burden of proof.
  Taxes erroneously paid.
    Taxpayer required to prove he bore burden of tax, §27-73-3.
Claims for taxes erroneously paid.
  Filing, §27-73-1.
Clerks of chancery courts.
  Overpayments by, §27-73-11.
Consent of state of Mississippi to suits for refund of tax on mineral interests.
  Withdrawal of consent, §27-73-13.
Deceased individuals, §27-73-9.
Decedents' estates.
  Federal and state tax refunds due to decedent individual without administration, §27-73-9.
Double payment, overpayment.
  Filing claim, §27-73-1.
Gasoline tax.
  Definition of refund gasoline, §27-55-5.
  Lost or destroyed gasoline, §27-55-27.
  Non-highway use, §27-55-23.
  Taxes erroneously or illegally collected, §27-55-45.
Interstate commercial carriers motor fuel tax, §§27-61-13, 27-61-33.
Limitation of actions, §27-73-5.
Liquefied compressed gas tax, §27-59-35.
  Taxes erroneously or illegally collected, §§27-59-47, 27-59-319.
Lower payments by tax collector or chancery clerk, §27-73-11.
Lubricating oil tax.
  Lost or destroyed oil, §27-57-19.
  Taxes erroneously or illegally collected, §27-57-33.
Mines and minerals.
  Withdrawal of consent to and abatement of, suits for refund of tax on mineral interests, §27-73-13.

TAX REFUNDS —Cont'd
Oil and gas.
  Withdrawal of consent to and abatement of, suits for refund of tax on oil and gas interests, §27-73-13.
Special fuel tax.
  Lost or destroyed fuel, §27-55-535.
  Taxes erroneously or illegally collected, §27-55-553.
Statute of limitations, §27-73-5.
Tax collectors, overpayments by, §27-73-11.
Taxes erroneously paid, §§27-73-1, 27-73-7.
  Authority to refund, §27-73-7.
  Taxpayer required to prove he bore burden of tax, §27-73-3.
Tobacco tax, §§27-69-49, 27-69-51.

TELECOMMUNICATIONS.
Broadband technology development.
  Telecommunications service providing broadband to colleges and universities.
    Payment credit voucher issued as credit against corporate franchise and income taxes, §27-111-1.
Bundled transactions.
  Sales tax, telecommunications services, §27-65-19.
Sales tax, §27-65-19.
  Exemption.
    Sales of equipment to be installed in tier one, two and three areas, §27-65-101.

TELEPHONE AND TELEGRAPH COMPANIES.
Sales tax.
  Levy of tax, §27-65-19.

TELEPHONE ANSWERING OR PAGING SERVICES.
Sales tax, §27-65-23.

TELEVISION.
Sales tax.
  Levy on business of radio or television installing, repairing or servicing, §27-65-23.
  Levy on TV cable systems, subscription TV services and similar activities, §27-65-23.

THEATERS.
Alcoholic beverages.
  Temporary theatre permit.
    Fees, §27-71-5.

TIME.
Sales tax.
  Failure to file return.
    Taxes and damages assessed, payment demand, §27-65-35.
  Taxes due and unpaid.
    Taxes and damages assessment, payment demand, §27-65-37.
Taxpayer appeals.
  Assessment, refund, tag penalty.
    Filing.
      Petition in chancery court, §§27-77-5, 27-77-7.
  IFTA license.
    Application denial.
      Filing appeal, §27-77-11.
    Chancery court appeals, §27-77-13.
    Revocation.
      Appeal to board of tax appeals, §27-77-12.
      Request for hearing, §27-77-12.
  Permit, tag, title.
    Application denial.
      Filing appeal, §27-77-11.
    Chancery court appeals, §27-77-13.
    Suspension, surrender, seizure, revocation.
      Hearing, §27-77-9.
      Request for hearing, §27-77-9.
Tobacco tax.
  Stamps.
    Affixing, §27-69-27.

TIRES.
Sales tax.
  Levy on business of vulcanizing, repairing or recapping of tires, §27-65-23.
Shipbuilder and tire fabrication and assembly facilities.
  Sales tax exemptions, §27-65-101.

TOBACCO AND TOBACCO PRODUCTS.
Nonsettling-manufacturer cigarettes.
  Fee on sale, use, consumption, distribution, manufacturer registration, §§27-70-1 to 27-70-23.
Taxation, §§27-69-1 to 27-69-79.

TOBACCO EQUITY TAX, §27-70-5.
Noncompliance, penalties, §27-70-19.

TOBACCO EQUITY TAX —Cont'd
Sales tax law, applicability, §27-70-19.

TOBACCO TAX, §§27-69-1 to 27-69-79.
Additional nature of tax, §27-69-23.
Administration of provisions, §27-69-65.
Appeals.
  Taxpayers aggrieved by department action, §§27-77-1 to 27-77-19.
Arrests.
  Agents, authority, §27-69-71.
Bonds, surety.
  Claims for seized products.
    Filing, §27-69-55.
  Stamps.
    Consignment to wholesalers without advance payment, §27-69-75.
Carriers.
  Applicability of provisions to carriers, §27-69-39.
Charitable organizations.
  Donations of tobacco.
    Exemption, §27-69-21.
Citation of law, §27-69-1.
Claims to seized products.
  Filing, §27-69-55.
Compromise of confiscation, §27-69-57.
Computation.
  Excise tax on other tobacco products, §27-69-27.
Confiscation.
  Compromise, §27-69-57.
  Contraband goods, §27-69-53.
  Procedure, §27-69-55.
Credit.
  Tobacco equity tax.
    Cigarettes returned to distributor, §27-70-5.
Criminal penalties.
  Falsely representing self as agent, §27-69-71.
  Permits.
    Engaging in business before permit procured or after permit cancelled, §27-69-7.
    Engaging in business without having secured permit, §27-69-11.
  Reuse of stamps, §27-69-47.
Damaged goods.
  Refunds, §27-69-49.
Dealers.
  Defined, §27-69-3.

TOBACCO TAX —Cont'd
Dealers —Cont'd
  Permits.
    Generally, §§27-69-5 to 27-69-11.
  Records, §27-69-35.
Debt to state of Mississippi.
  Unpaid taxes to constitute, §27-69-25.
Definitions, §27-69-3.
Distributors.
  Defined, §27-69-3.
  Tobacco equity tax, §27-70-5.
    Noncompliance, penalties, §27-70-19.
    Sales tax law, applicability, §27-70-19.
Examination of books and records, §27-69-35.
Exemptions, §27-69-21.
  Interstate sales.
    Dealers in tobacco made subject of interstate sales, §27-69-19.
General fund.
  Deposit to credit of, §27-69-75.
Imposition of tax, §27-69-13.
Injunctions.
  Engaging in business without permit or failure to report and pay tax, §27-69-61.
Interstate sales.
  Provisions not to apply to dealers in tobacco made subject of interstate sales, §27-69-19.
Interstate shipment.
  Segregation of stock for, §27-69-33.
Inventory and appraisal.
  Seized products, §27-69-55.
Invoices.
  Interstate commerce.
    Requirements as to possession of invoices, §27-69-39.
  Preservation of invoices, §27-69-37.
  Records of dealers, §27-69-35.
Levy of tax, §27-69-13.
Municipalities.
  Privileged tax upon dealers in cigarettes.
    Municipalities may impose, §27-69-69.
  Provisions not to construe municipal privileged tax, §27-69-23.
Nonsettling-manufacturer cigarettes.
  Fee on sale, use, consumption, distribution, manufacturer registration, §§27-70-1 to 27-70-23.

TOBACCO TAX —Cont'd
Notice of seizure of products, §27-69-55.
Payment.
  Evidenced by affixing stamps, §27-69-27.
  How paid, §27-69-75.
Peace officers.
  Assistance in enforcement, §27-69-67.
Penalties, §27-69-41.
  Engaging in business without permit, §§27-69-7, 27-69-11.
  Falsely representing self as agent of commissioner, §27-69-71.
  Reuse of stamps, §27-69-47.
Permits.
  Applications, §27-69-5.
  Disclosure of information to law enforcement, §27-69-5.
  Engaging in business without permit.
    Criminal penalties, §§27-69-7, 27-69-11.
    Injunction, §27-69-61.
  Issuance, §27-69-5.
  Privileged tax on, §27-69-7.
  Required, §27-69-5.
  Revocation, §27-69-9.
    Failure to preserve invoices, §27-69-37.
  Transfer, §27-69-5.
Rate of tax, §27-69-13.
  Tobacco equity tax, §27-70-5.
Reciprocity.
  Nonresident tobacco dealers.
    Requirements for doing business, §27-69-79.
Records, §27-69-77.
  Dealers, §27-69-35.
Refunds.
  Damaged goods, §27-69-49.
  Stamps shipped into another state, §27-69-51.
  Tax paid by wholesaler ceasing to do business, §27-69-51.
Rules and regulations, §§27-69-65, 27-69-73.
  Refund on damaged goods, §27-69-49.
Sale of cigarettes judged unfit for use and consumption, §27-69-49.
Sales tax law.
  Applicability of administrative provisions, §27-69-41.
Searches warrant.
  Unlawful sale, §27-69-59.
Seizure, forfeiture, sale of contraband, §27-69-53.
  Compromise, §27-69-57.

TOBACCO TAX —Cont'd
Seizure, forfeiture, sale of contraband —Cont'd
  Procedure, §27-69-55.
Spot stocks.
  Terminals or warehouses, §27-69-27.
Stamps, §27-69-13.
  Affixation, §§27-69-15, 27-69-27.
    Compensation to dealers for services in affixing, §27-69-31.
    Tobacco equity tax, §27-70-5.
    When distributors not required to affix, §27-69-17.
  Confiscation of unstamped cigarettes, §27-69-53.
  Damaged stamps, §27-69-63.
  Defined, §27-69-3.
  Discount, §27-69-31.
    Consignment to wholesalers without advance payment, §27-69-75.
  Payment of tax.
    Evidenced by affixing stamps, §27-69-27.
  Refund for stamps shipped into another state, §27-69-51.
  Reuse of stamps.
    Penalties, §27-69-47.
  Securely affixed, §27-69-27.
  Time for affixing after receipt of cigarettes, §27-69-27.
  Tobacco equity tax, §27-70-5.
Tobacco equity tax, §27-70-5.
  Noncompliance, penalties, §27-70-19.
  Sales tax law, applicability, §27-70-19.
Unlawful sale.
  Searches warrant, §27-69-59.
Untaxed tobacco supplies.
  Spot stocks.
    Terminals or warehouses, §27-69-27.
Wholesalers.
  Defined, §27-69-3.
  Invoices.
    Preservation, §27-69-37.
  Permits generally, §§27-69-5 to 27-69-11.
  Refund.
    Tax paid by wholesaler ceasing to do business, §27-69-51.
  Stamps.
    Affixation, §§27-69-13, 27-69-15.
    Purchase, §27-69-13.
    Record of stamps affixed, §27-69-15.

TORNADO, RAIN AND FLOODING DISASTER OF 1975, §§27-107-91 to 27-107-105.
Excessive rains and floods of spring 1975, §§27-107-111 to 27-107-127.
Tornado disaster of March 12, 1975, §§27-107-131 to 27-107-145.

TORNADO DISASTER OF 1971, §§27-107-51 to 27-107-61.

TORNADO DISASTER OF MARCH 12, 1975, §§27-107-131 to 27-107-145.
Excessive rains and floods of spring 1975, §§27-107-111 to 27-107-127.

TOURISM.
Mississippi development authority.
  Tourism industry sales tax exemption for guided tours on navigable waters of state, §§27-65-22, 27-65-101.
Sales tax exemption for receipts from guided tours on navigable waters, §§27-65-22, 27-65-101.

TRACTOR TRAILERS.
Interstate commercial carriers motor fuel tax, §§27-61-1 to 27-61-33.
Sales tax.
  Exemptions, §27-65-101.

TRAILER PARKS.
Sales tax, §27-65-23.

TRANSIENT VENDORS.
Salesmen's tax, §§27-67-501 to 27-67-511.
Tobacco tax, §§27-69-1 to 27-69-79.

TRANSPORTATION DEPARTMENT.
Budget estimates.
  General funds and state-source special funds.
    Revision by state fiscal officer, §27-104-13.
      Rescission or restoration, prohibition, §27-104-14.
  Performance budgeting and strategic planning.
    Evaluation of performance and review of plans, exemption from requirements, §27-103-155.
    Inventory of programs and activities from certain state departments, §27-103-159.

TRANSPORTATION DEPARTMENT —Cont'd
Budget estimates —Cont'd
  Performance budgeting and strategic planning —Cont'd
    Performance measurement data and targets, exemption from requirements, §27-103-153.
Funds.
  Budget estimates for general funds and state-source special funds.
    Revision by state fiscal officer, §27-104-13.
      Rescission or restoration, prohibition, §27-104-14.
General funds and state-source special funds.
  Budget estimates.
    Revision by state fiscal officer, §27-104-13.
      Rescission or restoration, prohibition, §27-104-14.

TRAVELING SALESMEN.
Salesmen's tax, §§27-67-501 to 27-67-511.
Tobacco tax, §§27-69-1 to 27-69-79.

TRIBAL TAX.
Choctaw Indians, §§27-65-211 to 27-65-221.

U

UNIFORM SALES AND USE TAX ADMINISTRATION LAW, §§27-68-1 to 27-68-17.

UNITED STATES.
Sales tax.
  Exemptions.
    Sales to United States, §27-65-105.
Use tax.
  Packaging material brought into state for use with materials for federal government.
    Exemption, §27-67-6.

UNITED WAY.
Sales of items to, sales tax exemption, §27-65-111.

UNIVERSITY OF MISSISSIPPI.
Medical center research development foundation.
  Sales tax exemptions, §27-65-111.

UNWED PREGNANCY.
Nonprofit organizations providing temporary housing.
  Sales tax exemptions, §27-65-111.

USE TAX, §§27-67-1 to 27-67-33.
Actions.
  Prior suits not affected by provisions, §27-67-33.
Administration of provisions, §27-67-31.
Collection, §27-67-17.
  Seller to collect tax from purchaser, §27-67-11.
County tax collectors.
  Duties as to tax, §27-67-5.
  Liability for tax required to be collected, §27-67-5.
Credit.
  Sales or use tax paid to another state, §27-67-7.
Damages.
  Failure to make return and pay tax, §27-67-19.
Debt from purchaser.
  Tax added to sale price, §27-67-11.
Definitions, §27-67-3.
  Mail order sale, §27-67-4.
  Sales and use tax administration law, §27-68-3.
Digital products.
  Specified digital products.
    Defined, §27-67-3.
    Levy and collection, §27-67-5.
    Mail order sales, §27-67-4.
Estimated tax liability.
  Payment of percentage of tax on, §27-67-17.
Exemptions, §§27-67-6, 27-67-7.
Extensions of time, §27-67-19.
Formulas.
  Computation of tax on basis of, §27-67-17.
Improper taxes.
  Recovery.
    Disbursement from treasury to taxpayer, §27-67-29.
Levy of tax, §27-67-5.
Lien of tax, §27-67-21.
Mail order sales, §27-67-4.
Manufacturers or public service corporations.
  Permits to pay taxes levied, §27-67-15.
Military affairs.
  Vehicles purchased by Mississippi citizens serving in armed forces, §27-67-7.

USE TAX —Cont'd
Modular homes, panelized homes and precut homes.
  Factory built components.
    Disclosure of amount to buyers.
      Sellers' duty, §27-65-17.1.
Payment, §27-67-17.
  Damages for failure to pay, §27-67-19.
Permits, §27-67-15.
Registration of seller, §27-67-9.
Religious institutions.
  Exemptions, §27-67-7.
    Retroactive application of exemption on certain property, §27-67-8.
  Records.
    Examination of records, §27-67-8.
Reports.
  County tax collectors, §27-67-5.
Returns.
  Damages for failure to make return, §27-67-19.
  Filing, §27-67-17.
Sales tax generally, §§27-65-1 to 27-65-231.
Saving provision.
  Prior claims not affected by provisions, §27-67-33.
Seller.
  Assuming or absorbing, prohibition, §27-67-11.
  Collection of tax from purchaser, §27-67-11.
  Registration, §27-67-9.
Title of law, §27-67-1.
Uniform sales and use tax administration law, §§27-68-1 to 27-68-17.
United States.
  Packaging material brought into state for use with materials for federal government.
    Exemption, §27-67-6.
User.
  Liability, §27-67-13.
Utilities purchased by manufacturer or enterprise.
  Exemption, §27-67-7.

UTILITY DISTRICTS.
Taxation.
  Reports of taxing entities, §27-101-21.

V

VENDING MACHINES.
Sales tax rate.
  Sale of food and drink to be sold by, §27-65-17.

VENUE.
Taxpayer appeals.
  Petition in chancery court, §27-77-7.

VESSELS.
Cruise vessels.
  Privilege licenses, §§27-109-1 to 27-109-15.
  Sales tax.
    Floating structures.
      Selling tangible personal property or performing construction upon certain floating structures, §27-65-18.
Gasoline tax.
  Inspection of boat transporting gasoline, §27-55-53.
  Seals on vessels, §27-55-33.
  Unloading taxable petroleum products, §27-55-33.
Lubricating oil tax.
  Inspection of boat transporting, §27-57-41.
Shipbuilder and tire fabrication and assembly facilities.
  Sales tax exemptions, §27-65-101.
Special fuel tax.
  Inspection of vessel transporting special fuel, §27-55-547.

VOLUNTEER FIRE DEPARTMENTS AND FIRE FIGHTERS.
Tax on gasoline, special fuel and compressed air.
  Exemption to volunteer fire departments, §27-55-12.

W

WAR.
Gasoline tax.
  Modifications or alterations of requirements in wartime, §27-55-59.

WAREHOUSES AND WAREHOUSEMEN.
Electric energy produced from firing biomass.
  Investment tax credit for eligible facilities.
    Sales tax exemption.
      Gross income from public warehouses derived from temporary storage of raw materials used by eligible facility, §27-65-101.
Sales tax.
  Public storage warehouses, §27-65-23.

WARRANTS FOR PAYMENT OF MONEY.
Local governments' depositories.
  County depositories.
    Failure to pay county warrants, §27-105-329.

WATERCRAFT.
Cruise vessels.
  Privilege licenses, §§27-109-1 to 27-109-15.

WELDING.
Sales tax.
  Levy on business of welding, §27-65-23.

WINE.
Light wine and beer.
  Taxation, §§27-71-1 to 27-71-31.

WINE COOLERS.
Light wine and beer.
  General provisions, §§27-71-301 to 27-71-349.

WIRELESS COMMUNICATIONS.
Ringtones.
  Defined, §27-65-26.
  Sales tax.
    Sale, rental, lease of specified digital products, §27-65-26.

WITNESSES.
Sales tax.
  Powers of commissioner as to witnesses, §27-65-85.

WORKING CASH-STABILIZATION RESERVE FUND, §27-103-203.
Transfer of balances remaining in abolished funds to, §§27-103-205, 27-103-207.
Transfers from fund to cover cash flow deficiencies, §27-103-204.
Unencumbered cash balance in general fund at close of fiscal year.
  Distribution, §27-103-213.

Z

ZOOLOGICAL PARK AND GARDEN DISTRICTS.
Sales of items to, sales tax exemption, §27-65-111.